

Military Families & The Need for Paid Leave

Military families face the same challenges that their civilian counterparts face when dealing with issues such as long-term illness, a new child, or the need to care for a family member. However, the unique aspects of military life increase the difficulties posed by these challenges substantially. Military families endure deployments, frequent moves, and regular separations in support of their service member's duty. Military families' unique needs make their need for paid family and medical leave especially acute and make ensuring comprehensive paid family and medical leave a critical issue for today's military families.

Who Are Military Families?

- Military family members across both active duty and Reserve and Guard outnumber service members themselves. There are about 2.6 million military spouses, children, and adult dependents for about 2.1 million military personnel.¹ The overwhelming majority of military spouses are female (89%).²
- Military spouses report higher levels of unemployment and underemployment than their civilian counterparts, due to the very nature of military life.³
 - The unemployment rate among active duty spouses in the civilian labor force is 22%.⁴
 - Underemployment is also a significant problem: nearly a third (31.6%) of military spouses work part-time as compared to just under 20% of the population as a whole, despite the fact that half of military spouses wish to be working full-time.⁵
 - Among other pressures, the military lifestyle requires frequent moves,⁶ which can be a significant factor in military spouse unemployment and underemployment.

Deployment and the Need for Leave

- Prior to and during a deployment, military spouses and other family members often need time off to respond to the needs and pressures deployment:
 - Especially in the face of a short-notice deployment, military spouses may need time off to make childcare arrangements, attend military ceremonies or make financial and legal arrangements.
 - Time off to seek counseling whether as the military spouse or as a parent of a military child can be needed prior to, during, and/or after deployment.
 - While on deployment the service member may receive rest and recuperation leave and military spouses need to be able to take time as needed to be with their service member during those times.

- In the most unfortunate circumstances, a military spouse may need to take leave in order to care for a wounded service member or to prepare for or attend a funeral for a service member.

Military Caregiving and the Need for Leave

- Today, there are an estimated 5.5 million military caregivers in the United States—those caring for loved ones who are ill or injured as a result of their service.⁷
 - Of those, approximately 20%, or 1.1 million, are caring for those who served after September 11, 2001 (“post-9/11 caregivers”).⁸
- Many military caregivers—nearly one in five post-9/11 caregivers and around one in ten pre-9/11 caregivers—served themselves, making military caregiving an important issue not only for military families but also for veterans themselves.⁹
- Military caregivers represent the full range of loved ones of servicemembers, including spouses and partners, parents and children, extended family members, and friends and neighbors.¹⁰
- Military caregivers care for veterans and service members with a wide variety of health conditions, many of whom have more than one service-related health need.
 - Care recipients face injuries and physical ailments from traumatic brain injuries (TBI) to paralysis or spinal cord injuries to mobility-limiting knee or back pain to hearing or vision loss.¹¹
 - Mental health and substance use issues affect nearly two-thirds of post-9/11 care recipients and just over one-third of pre-9/11 care recipients.¹²
 - More than half (52%) of post-9/11 care recipients have PTSD.¹³
- Providing care to injured and ill veterans and service members takes a profound toll on caregivers’ labor force participation, especially for post-9/11 caregivers.
 - Post-9/11 caregivers report missing an average of three and a half days of work per month, more than triple the rate of their civilian counterparts.¹⁴
 - Almost half of post-9/11 caregivers report having taken unpaid time off work or stopping work temporarily due to caregiving needs, nearly double the still-significant rates reported by civilian and pre-9/11 caregivers.¹⁵
 - More than a quarter (28%) of post-9/11 caregivers report quitting work entirely due to the impacts of caregiving.¹⁶
- 61.7% of post-9/11 military caregivers and 37.5% of civilian caregivers report financial strain as a result of caregiving.¹⁷
 - Despite having similar educational backgrounds, military caregivers of all eras are more likely to have a lower household income (less than 250% of the federal poverty level) than civilian caregivers.¹⁸

Military Families and Other Needs for Leave

- Military family members need leave to deal with their own serious health needs. Whether facing a chronic condition like diabetes or asthma, an acute illness like cancer, or a severe injury, military family members need time to get the treatment they need and to recuperate and heal.
- Military family members may need to care for seriously ill loved ones whose health needs are not related to military service, like caring for an elderly parent with Alzheimer's or taking a child with kidney disease to dialysis.
 - This need may be especially acute for families dealing with deployment, where a spouse or other loved one who might otherwise share the responsibilities of caregiving is unable to assist due to their service responsibilities. For instance, military spouses may take on care for ailing in-laws while their spouses are serving overseas.
- Military family members need leave when welcoming a new child.
 - When a new child joins a military family, parents face all the same challenges as their civilian counterparts. Yet military family members may also be dealing with a spouse or co-parent who is deployed or be far away from their own parents or other loved ones who might otherwise be able to offer support.
 - Many military families are facing these needs each year: there are over 200,000 children under the age of two in active duty families.¹⁹

Military Families and the Family and Medical Leave Act (FMLA)

- In 2008 and 2009, Congress amended the FMLA to provide two new protections specifically for military families.²⁰
- First, the FMLA provides the right to take leave for certain needs (“qualifying exigencies”) in connection with a family member’s deployment.
 - Military family members can take leave from work to attend military events and related activities.²¹
 - Leave can be used to make financial or legal arrangements, like preparing a will, executing a power of attorney, or setting up a spouse with banking authority or to act as the service member’s representative when seeking military service benefits during or immediately following deployment.²²
 - Adjusting to deployment can present particular challenges for the families of service members with caregiving responsibilities. For this reason, leave

can also be used in connection with the care or educational needs of the service member's child.²³

- Recognizing that deployment can also take an emotional toll, leave can be used to seek non-medical counseling, whether that counseling is for the person taking leave, their child, or for the service member himself or herself.²⁴
- When a loved one is deployed on short notice—less than seven calendar days—leave can be taken to address *any* need that comes up as a result.²⁵
- When a service member returns home for a short-term rest and recuperation leave during deployment, family members can take leave for up to fifteen days simply to be with their loved one.²⁶
- In the situation that all military families hope never comes—the death of a service member while on active duty—leave can be used to meet or recover the service member's body, to make funeral arrangements, or to attend services.²⁷
- The FMLA also extends additional protections to certain military caregivers.²⁸
 - First, the military caregiving provisions provide extended leave time: up to 26 weeks of leave, as opposed to 12 weeks for other FMLA needs.²⁹
 - Second, the law expands the list of family members who can take time off to provide care as compared to civilian caregiving.³⁰

The Limits of the FMLA for Military Families

- Nationally, an estimated 34% of American workers are not covered by the FMLA.³¹ However, military families, especially military spouses, may be disproportionately likely to be excluded.
 - Frequent moves due to their loved one's military responsibilities may make it more difficult to meet the FMLA's one-year employment requirement.
 - Service members experience permanent change-of-station moves on average every two to three years.³²
 - Almost two-thirds (65%) of military spouses who quit a job due to relocation needed at least four months to find a new employer; a full quarter (25%) reported it took more than a year to find a new job.³³
 - The combination of frequent moves and lengthy job searches make it unlikely that, at any given point in time, a military spouse will have been in their job for at least a year.
 - In addition, over 18% of employed spouses have seasonal or temporary jobs, but the overwhelming majority of those spouses

- (82%) would prefer a permanent position.³⁴ This can mean that even those spouses who are able to find employment may not be able to maintain that position long enough to qualify, despite wanting permanent work.
- Second, many military spouses work part-time, making it harder to meet the 1,250 hours worked requirement.
 - Military spouses are more likely to work part-time than their civilian counterparts and are also more likely to be involuntary part-time workers, meaning they are working part-time but would prefer to be working more hours.³⁵
 - Moreover, the 1,250 hours must be worked for a single employer. A quarter of employed military spouses are working more than one job for pay,³⁶ which could mean that even those who are working enough hours overall may still not be covered if those hours are spread over multiple employers.
 - **Problems of Unpaid Leave**
 - The FMLA gives covered employees the right to *unpaid* leave. This means that working people can take this leave only if they can afford to go without income. For the 44% of military spouses who report living paycheck-to-paycheck or struggling financially,³⁷ unpaid leave is simply out of reach.
 - Without a legal right, military families are unlikely to have access to the paid leave they need.
 - Nationwide, only 21% of workers receive paid family leave through their employers to care for a seriously ill or injured family member (including those with service-connected conditions) or bond with a new child. Among low-income workers, the number is even lower.³⁸
 - Just 8% of part-time workers, among whom military spouses are overrepresented, have access to paid family leave.³⁹
 - For their own health, a majority of workers do not have access to short-term disability insurance through their employers. Low-income workers and part-time workers are especially likely to be left out.⁴⁰
 - Though many workers have access to paid sick days through their employers, most do not have enough time for a serious illness or injury—on average, workers have just eight sick days per year.⁴¹ Nearly a quarter of workers have zero paid sick days, including an even larger percentage of low-income workers.⁴²

- 77% of employed military spouses reported that having two incomes was vitally important to their family,⁴³ yet military families with children are less likely than their civilian counterparts to have two incomes.⁴⁴ Allowing military spouses to take the leave they need, keep their paycheck, and then return to the job their family relies on can help bridge this gap.

Military Families and State Leave Laws

- States have passed their own laws that offer additional rights and cover people who may be excluded from the FMLA. While some of these laws provide the right to unpaid, job-protected leave, others provide a right to pay.
- At least thirteen states provide covered workers with the right to unpaid leave in connection with a family member's deployment by state law.⁴⁵
- Nine states and D.C. have passed laws that provide a right to paid benefits while workers are away from work due to health or family responsibilities.⁴⁶ These laws can provide much needed income to military families and caregivers while they are away from work due to military, health, or family obligations.
 - More than half of these laws cover deployment related needs.⁴⁷

¹ *2019 Demographics: Profile of the Military Community*, U.S. Dep't of Def. 121 (2019) [hereinafter *2019 Demographics*], <https://download.militaryonesource.mil/12038/MOS/Reports/2019-demographics-report.pdf>.

² *Id.* at 134 & 158.

³ *Military Spouses in the Workplace: Understanding the Impacts of Spouse Unemployment on Military Recruitment, Retention, and Readiness*, U.S. Chamber of Com. Found. 7 (June 2017), <https://www.uschamberfoundation.org/sites/default/files/Military%20Spouses%20in%20the%20Workplace.pdf>.

⁴ *2019 Demographics*, *supra* note 1, at 136.

⁵ *Military Spouses in the Labor Market*, The Council of Econ. Advisers 2 (May 2018), <https://www.whitehouse.gov/wp-content/uploads/2018/05/Military-Spouses-in-the-Labor-Market.pdf>.

⁶ U.S. Chamber of Com. Found., *supra* note 5, at 6.

⁷ Rajeev Ramchand et al., *Hidden Heroes: America's Military Caregivers*, RAND Corp. 30 (2014), http://www.rand.org/content/dam/rand/pubs/research_reports/RR400/RR499/RAND_RR499.pdf.

⁸ *Id.*

⁹ *Id.* at 39.

¹⁰ *Id.* at 34.

¹¹ *Id.* at 48.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 106.

¹⁵ 48.4% of post-9/11 caregivers took unpaid time off from work or temporarily stopped working, as compared to 24.8% of pre-9/11 caregivers and 24.9% of civilian caregivers. *Id.* at 106.

¹⁶ *Id.* at 160.

¹⁷ *Id.* at 106.

¹⁸ *Id.* at 39.

¹⁹ 2019 *Demographics*, *supra* note 1, at 143.

²⁰ National Defense Authorization Act for Fiscal Year 2008, PL 110–181, Jan. 28, 2008, 122 Stat 3, Section 585; National Defense Authorization Act for Fiscal Year 2010, PL 111-84, Oct. 28, 2009, 123 Stat 2190, Section 565 (codified at 29 U.S.C. § 2612(a)(1)(E)).

²¹ 29 C.F.R. § 825.126(b)(2).

²² *Id.* § 825.126(b)(4).

²³ *Id.* § 825.126(b)(3).

²⁴ *Id.* § 825.126(b)(5).

²⁵ *Id.* § 825.126(b)(1).

²⁶ *Id.* § 825.126(b)(6).

²⁷ *Id.* § 825.126(b)(7)(ii).

²⁸ 29 U.S.C. § 2612(a)(3); 29 C.F.R. § 825.127.

²⁹ *Id.* § 2612(a)(3).

³⁰ *Id.* § 2612(a)(3); 29 C.F.R. § 825.122(e).

³¹ Scott Brown et al., Employee and Worksite Perspectives of the Family and Medical Leave Act: Results from the 2018 Surveys 6 (July 2020), https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/WHD_FMLA2018SurveyResults_FinalReport_Aug2020.pdf (report prepared for the U.S. Dep’t of Labor).

³² Jeremy Burke & Amalie Miller, *The Effect of Military Change-of-Station Moves on Spousal Earnings* (2016), RAND CORPORATION, https://www.rand.org/pubs/research_briefs/RB9920.html.

³³ U.S. Chamber of Com. Found., *supra* note 5, at 9.

³⁴ *Id.* at 7.

³⁵ Nelson Lim & David Shulker, *Measuring Underemployment Among Military Spouses*, RAND Corporation, https://www.rand.org/content/dam/rand/pubs/monographs/2010/RAND_MG918.pdf, page 36.

³⁶ U.S. Chamber of Com. Found., *supra* note 5, at 7.

³⁷ *Id.* at 11.

³⁸ *National Compensation Survey: Employee Benefits in the United States, Mar. 2020*, U.S. Bureau of Labor Statistics, Table 31 (2020), <https://www.bls.gov/ncs/ebs/benefits/2020/employee-benefits-in-the-united-states-march-2020.pdf>.

³⁹ *Id.*

⁴⁰ Only 40% of workers have access to short-term disability insurance through their employers; among the lowest 25% of wage earners, just 19% have access and among part-time workers, just 16% have access. *Id.* Table 16.

⁴¹ *Id.* Table 34 (mean for civilian workers with a fixed number of sick days at all lengths of service).

⁴² *Id.* Table 31.

⁴³ U.S. Chamber of Com. Found., *supra* note 5, at 12.

⁴⁴ *Id.*

⁴⁵ California, Connecticut, Illinois, Indiana, Maine, Maryland, Minnesota, Nebraska, New York, Ohio, Oregon, Rhode Island, Washington.

⁴⁶ For detailed information about state paid leave laws, please visit A Better Balance’s comparison chart at <https://www.abetterbalance.org/resources/paid-family-leave-laws-chart/>.

⁴⁷ *Id.*