

FAMILY AND MEDICAL LEAVE ACT (FMLA) POLICY
Revision Log

Revision	Effective Date	Approved	Description of Changes
00	December 14, 2015	M. Barnett	<i>First Release</i>
01	January 6, 2020	A. Clark	<i>Supersedes Rev 00.</i>

1. Purpose

Sonstegard recognizes that situations occur in employees' lives that may require them to be away from work for limited periods of time. It is the intent of Sonstegard to provide eligible employees with time off, with and without pay, to tend to a qualifying event as described in this policy and under the Family and Medical Leave Act of 1993 (FMLA).

Sonstegard posts the mandatory FMLA Notice at each of its Sites where other important notices are posted. Upon hire, all new employees are provided with notices required by the U.S. Department of Labor (DOL) on Employee Rights and Responsibilities under the Family and Medical Leave Act.

The Company reserves the right to unilaterally revise, suspend, revoke, terminate or change this policy, in whole or in part, with or without notice. In the event of any conflict between this policy and the applicable law, employees will be afforded all rights required by law.

2. Definitions and Abbreviations

Term	Definition
FMLA	Family Medical Leave Act
29 CFR § 825.102	General definitions outlined in the Code of Federal Regulations under the FMLA.
29 CFR § 825.122	Definitions outlined in the Code of Federal Regulations under the FMLA of covered service member, spouse, parent son or daughter, next of kin of a covered service member, adoption, foster care, son or daughter on covered active duty or call to covered active duty status, son or daughter of a covered service member, and parent of a covered service member.
COBRA	Consolidated Omnibus Budget Reconciliation Act is a US law that mandates an employee be offered the opportunity to continuous health insurance coverage after leaving the Company.

3. General Provisions

Sonstegard will grant up to 12 weeks (or up to 26 weeks of military caregiver leave to care for a covered service member with a serious injury or illness) during a 12-month period to eligible employees. This leave may be paid, unpaid, or a combination of paid and unpaid leave, as specified in this policy.

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4. Eligibility

To qualify for family or medical leave under this policy, employees must meet all of the following conditions:

- a. The employee must have worked for the Company for 12 months or 52 weeks. The 12 months or 52 weeks need not have been consecutive. Separate periods of employment will be counted, provided that the break in service does not exceed seven (7) years. Separate periods of employment will be counted if the break in service exceeds seven (7) years due to National Guard or Reserve military service obligations or when there is a written agreement, stating the employer's intention to hire the employee after the service break.
- b. The employee must have worked at least 1,250 hours in the 12 months immediately prior to the commencement of the leave. Any time not worked (vacation, paid or unpaid leave, etc.) is not counted as "time worked" in determining FMLA eligibility.
- c. The employee must work a location with 50 or more employees are employed by Sonstegard Foods within a 75-mile radius.
- d. The employee has not used all available FMLA leave in the 12 months immediately prior to the commencement of the leave.
- e. There is a qualifying event.

5. Qualifying Events

Under the FMLA there are only six (6) qualifying events, to the extent employees are eligible:

- a. The birth of a child and in order to care for that child.
- b. Placement of a child with you for adoption or foster care and to care for the newly placed child.
- c. To care for the following family member(s) with a serious health conditions:
 - i. Son/daughter who is under age 18 (or anyone under age 18 who is treated as the employee's child);
 - ii. Son/daughter who is age 18 or older and incapable of self-care because of a mental or physical disability, or incapacitated due to illegal use of drugs;
 - iii. Spouse (Under FMLA a "spouse" means husband or wife, including those in same-sex marriages, which were made legal in all 50 United States as of June 26, 2015); or
 - iv. Parent (or anyone who treated the employee as a son or daughter when the employee was under age 18). (Please note: The FMLA does not consider a parent-in-law as a parent).
- d. For your own serious health condition that makes you unable to perform the functions of your job, including qualifying workers' compensation leaves.
- e. For qualifying exigency leave for families of the National Guard or Reserves or of a regular component of the Armed Forces when the covered military member is on covered active duty or called to covered active duty.
- f. Military Caregiver leave (also known as covered service member leave) to care for an injured or ill service member or veteran.



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6. Qualifying Exigency

An employee whose spouse, son, daughter, or parent either has been notified of an impending call or order to covered active military duty or who is already on covered active duty may take up to 12 weeks of leave for reasons related to or affected by the family member's call-up or service. The qualifying exigency must be one of the following:

- a. Short-notice deployment
- b. Military events and activities
- c. Child care and school activities
- d. Financial and legal arrangements
- e. Counseling
- f. Rest and recuperation
- g. Post-deployment activities, and
- h. Additional activities that arise out of active duty, provided that the employer and employee agree, including agreement on timing and duration of the leave.

Eligible employees are entitled to FMLA leave to care for a current member of the Armed Forces, including a member of the National Guard or Reserves, or a member of the Armed Forces, the National Guard or Reserves who is on the temporary disability retired list, who has a serious injury or illness incurred in the line of duty for which he/she is undergoing medical treatment, recuperation, or therapy; or otherwise in outpatient status; or otherwise on the temporary disability retired list. Eligible employees may not take leave under this provision to care for former members of the Armed Forces, former members of the National Guard and Reserves, and members on the permanent disability retired list.

In order to care for a covered service member, an eligible employee must be the spouse, son, daughter, parent or next of kin of a covered service member.

- a. A "son or daughter of a covered service member" means the covered service member's biological, adopted, foster child, stepchild, legal ward, or a child for whom the covered service member stood in loco parentis, and who is of any age.
- b. A "parent of a covered service member" means a covered service member's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered service member. This term does not include parents "in-law".
- c. Under FMLA, a "spouse means husband or wife, including those in same-sex marriages, which were made legal in all 50 United states as of June 26, 2015.



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- d. The “next of kin of a covered service member” is the nearest blood relative, other than the covered service member’s spouse, parent, son or daughter, in the following order of priority: blood relatives who have been granted legal custody of the service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered service member has specifically designated in writing another blood relative or his/her nearest blood relative for purposes of military caregiver leave under FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered service member, all such family members shall be considered the covered service member’s next of kin and may take FMLA leave to provide care to the covered service member, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered service member’s only next of kin.

Sonstegard may require the employee to provide confirmation of covered family relationship to the covered service member pursuant to 29 CFR § 825.122.

The term “covered active duty” means:

- a. Covered active duty for members of a regular component of the Armed Forces means duty during deployment of the member with the Armed Forces to a foreign country.
- b. Covered active duty or call to covered active duty status in the case of a member of the Reserve components of the Armed Forces means duty during deployment of the member with the Armed Forces to a foreign country under the federal call or order to active duty in support of a contingency operation, in accordance with 29 CFR § 825.102.

The term “covered service member” means:

- a. A member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on temporary disability retired list, for a serious injury or illness; or
- b. A veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces at any time during the period of five (5) years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.



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The term “serious injury or illness” means:

- a. In the case of a member of the Armed Forces – An injury or illness that was incurred by the member in the line of duty in the Armed Forces (or existed before the beginning of the members active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member’s office, grade, rank or rating.
- b. In the case of a veteran who was a member of the Armed Forces at any time during a period when the person was a covered service member – A qualifying injury or illness incurred by a covered service member in the line of duty on active duty that may render the member medically unfit to perform the duties of the member’s office, grade, rank or rating.
- c. Outpatient status with respect to a covered service member – The status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient; or a unit established for the purposes of providing command and control of members of the Armed Forces receiving medical care as outpatients.

7. Amount of Leave

An eligible employee can take up to 12 weeks for the FMLA circumstances a through a through e, listed in Section 5 “Qualifying Events,” under this policy during any 12-month period. The Company will measure the 12-month period as a rolling 12-month period measured backward from the date an employee uses any leave under this policy. Each time an employee takes leave, the Company will compute the amount of leave the employee has taken under this policy in the last 12 months and subtract if from the 12 weeks of available leave, and the balance remaining is the amount the employee is entitled to take.

An eligible employee can take up to 26 weeks for the FMLA circumstances f, Military Caregiver Leave listed in Section 5 “Qualifying Events,” during a single 12-month period. For this military caregiver leave, the Company will measure the 12-month period as a rolling 12-month period measured forward. FMLA leave already taken for other FMLA circumstances will be deducted from the total 26 weeks available.

8. Definitions (Applicable to Non-Military Family Leave)

- a. Serious health condition is any illness, injury, impairment or physical or mental condition that involves inpatient care in a hospital, hospice or residential medical care facility, or continuing treatment by a health care provider.



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Unless there are complications, the FMLA does not consider the following as serious health conditions: the common cold, the flu, earaches, upset stomachs, minor ulcers, headaches other than migraines, routine dental or orthodontia (e.g., crowded or crooked teeth) problems, and periodontal (gum) disease. Absence due to substance abuse, except for appropriate treatment of such a condition, also does not qualify for FMLA leave.

b. Continuing treatment by a health care provider includes any of the following:

- i. A period of incapacity (inability to work, attend school, or perform other regular daily activities due to the serious health condition, treatment for it, or recovery from it) of more than three (3) consecutive calendar days plus either two or more treatments (which do not include routine examinations) by a health care provider or one treatment by a health care provider followed by a regimen of continuing treatment, such as prescription drugs or therapy requiring special equipment.
- ii. Any period of incapacity due to pregnancy (including severe morning sickness, regardless of whether treatment is received during the period of incapacity, and even if the incapacity is less than three days) or for prenatal care.
- iii. Any period of incapacity (even if fewer than three days and even if no treatment is sought during the period of incapacity) or treatment for such incapacity due to a chronic, serious health condition, which is defined to include one which:
 1. Requires periodic visits for treatment by a health care provider
 2. Continues over an extended period, including recurring episodes of a single condition
 3. May cause episodic rather than a continuing period of incapacity (for example, asthma, diabetes, epilepsy)
- iv. Any permanent or long-term period of incapacity due to a condition (such as Alzheimer's, a severe stroke or the terminal stages of cancer) for which treatment may not be effective, and where the employee or family member suffering from the incapacity is under the continuing supervision of, but not necessarily the active treatment by a health care provider.
- v. Any period of incapacity relating to receipt of multiple treatments by, under orders of, or on referral by, a health care provider, either for restorative surgery after an injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical treatment (such as chemotherapy or radiation treatments for cancer, physical therapy for severe arthritis, or dialysis for kidney disease).

c. Health Care Provider includes a licensed doctor of medicine or osteopathy, a podiatrist, a dentist, a nurse practitioner, a clinical social worker, and any other health care provider considered a health care provider under FMLA, recognized by the Company or accepted by the group health plan of the Company.



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- d. Medical Certification – Employees must provide written health care provider certification of a serious health condition, whether for his/her own serious health condition or that of a qualified family member, within 15 days (where practicable). Sonstegard may deny a requested FMLA leave until the required certification is provided. To provide it with verified information to determine if the FMLA applies to the requested leave, the certification must include the following:
- i. The date on which the serious health condition commenced and its probable duration.
 - ii. The appropriate medical facts as known to the health care provider regarding the condition.
 - iii. A brief statement of the regimen of treatment prescribed by the health care provider.
 - iv. An indication of whether in-patient care is required.
 - v. A statement that the employee's serious health condition makes the employee unable to perform work of any kind or his/her job functions (if applicable).
 - vi. A statement that the employee is needed to care for an immediate family member and the estimated time such care will be needed (if applicable).

To fulfill this requirement, the appropriate Certification of Health Care Provider Form, as listed in Section 17, Appendix A of this policy, must be completed by the health care provider. This form is also available in Human Resources and will be given to the employee at the time of his/her request for Family and Medical Leave.

In addition, the FMLA permits the Company to require additional, independent medical evaluations, at its expense, to further substantiate the seriousness of the medical condition and/or the need for a leave.

- e. Certification of Qualifying Exigency for Military Family Leave – The Company will require certification for the qualifying exigency for military family leave. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the DOL Certification of Qualifying Exigency for Military Family Leave.
- f. Certification for serious injury or illness of Covered Service member for Military Family Leave – The Company will require certification for the serious injury or illness of the covered service member. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the DOL Certification for Serious Injury or Illness of Covered Service member.

9. Reverification

The Company may request recertification for the serious health condition of the employee or the employee's family member no more frequently than every 30 days unless circumstances have changed significantly, or if the Company receives information casting doubt on the reason given for the absence, or if the employee seeks an extension of his/her leave. Otherwise, the Company may request recertification for the serious health condition of the employee or the employee's family member every six (6) months in connection with a FMLA absence.

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FMLA leave is unpaid. But an employee may be eligible for other types of leave that are paid (such as paid time off, disability, workers' compensation, etc.) and may be taken for FMLA-qualifying reasons. Under this policy, as the FMLA permits, an employee with earned and "banked" (called "accrued") paid leave is required to use **a minimum of 24 hours of paid leave** at the same time as his or her FMLA leave is "running" and continue on unpaid FMLA leave thereafter if more FMLA-qualifying leave is still necessary for the balance of the 12 workweeks in the 12-month period permitted by the FMLA. In no case will use of paid time extend the 12 workweeks leave period, and in no case can or will the use of paid leave result in receipt of more than 100% of the employee's salary.

Employees may have multiple family and medical leave applications running concurrently for different qualifying reasons. Note an employee's entitlement is limited to a total of 12 workweeks of leave per 12-month period designated by the Company regardless if the employee has multiple qualifying reasons. Conversely, an eligible employee may use a combined total of 26 weeks to care for a covered service member with a serious illness or injury.

Examples include: disability leave for the birth of a child and for an employee's own serious health condition, including workers' compensation, will be designated as FMLA leave, and will run concurrently with FMLA leave.

10.1 Intermittent and Reduced Schedule Leaves

The employee may take FMLA leave in 12 consecutive weeks, or intermittently (meaning a day and sometime even part of a day, as necessary, during the FMLA year) so long as the leave does not exceed 12 workweeks over a 12-month period.

As permitted by the FMLA, the Company may require an employee on intermittent or reduced scheduled leave to temporarily transfer to an alternative job – for which the employee is qualified, and that provides equivalent pay and benefits – for the good of the business as permitted by law. In leaves concerning the birth, adoption or foster care of a child, the Company and the employee must agree to an intermittent work schedule prior to any intermittent leave or reduced hour schedule. Such a leave must be taken within 12 months of the birth or placement of the child.

In leave concerning a serious health condition or the serious health condition of a family member, the employee should also try to reach agreement with the Company before the intermittent leave or the reduced hour schedule.

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Sonstegard will maintain group health, dental, vision, life/AD&D, short-term and long-term disability insurance coverage for employees on FMLA leave “as if” they were active employees, including any active employee monthly contributions, and any changes in coverage or contribution amounts. Coverage will remain at the level and under the conditions for which coverage would have been provided if the employee had continued in employment continuously for the duration of such leave unless, the employee elects to discontinue coverage while on leave.

- a. Premium Collection: For any paid portion of an FMLA leave, the employee’s contributions will be paid as in any paid leave. For any unpaid portion, employees will repay contributions from their next available paycheck(s) following the return from their FMLA leave. If an employee so chooses, the employee may remit payments to Sonstegard Foods on an after-tax basis, with payments to be made by the first of each month. Contributions for all other benefits will be collected as described in the plan’s summary plan description.
- b. Termination of Coverage: Health coverage will cease if the employee informs the Company of an intent not to return from leave, when the employee fails to return from leave and thereby terminates employment or when the employee exhausts the leave entitlement without returning from leave. When coverage ends, the employee may have the option to continue health coverage under the federal COBRA law, at his or her expense.
- c. Reimbursement of Premium: An employee who fails to return to work after an FMLA leave expires is required to reimburse the Company for its share of premiums for coverage provided during the leave, unless the employee fails to return because of the continuation, recurrence or onset of a serious health condition or another circumstance beyond the employee’s control, including a “key employee” termination. Failure to reimburse Sonstegard will require withholding such amounts from payments otherwise owed to the employee (e.g., accrued paid time off).

12. Job Reinstatement

An employee is entitled to reinstatement to his/her prior job, or an equivalent job with equivalent pay and benefits, after timely return from an FMLA leave except for changes that would have affected his/her employment had the employee remained actively employed. For instance, if the employee’s position has been eliminated and the employee would have been laid off had he/she been active, the employee would not be entitled to reinstatement.

An employee returning from a serious illness leave is required to provide a health care provider’s written Fitness for Duty Certification of his/her ability to resume work. If the employee remains unable to perform an essential function of his/her position because of a physical or mental condition, including the continuation of a serious health condition, the employee has no right to reinstatement under the FMLA. The employee is responsible for the cost of obtaining any Fitness for Duty Certification for return to work.

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13. Employment While on Approved FMLA Leave

Employees are not permitted to work for another employer or otherwise perform services for someone else while on approved FMLA leave from Sonstegard. An employee who engages in such unauthorized conduct is subject to immediate termination of employment.

14. Misrepresentation of Leave

If a leave of absence granted for a specific purpose is not being used for that purpose, the leave may be cancelled and the employee directed to return to work immediately. Where this occurs due to the absent employee's fraud or other fault, he/she is not protected by the FMLA's job restoration or maintenance of health benefits provisions and may be subject to immediate termination of employment.

15. Procedure for Requesting Leave

All employees requesting leave under this policy must provide verbal notice with an explanation of the reason(s) for the needed leave to his/her immediate supervisor, who will advise the Human Resources department or manager. All employees will be required to complete the appropriate Application for FMLA, as listed in Section 19, Appendix A of this policy, and provide the necessary reason(s). If the certification is incomplete or insufficient, the Company will specify what information is lacking and give the employee seven (7) calendar days to cure the deficiency.

The Company will provide a Notice of Rights and Obligations to the employee requesting leave within two (2) business days or as soon thereafter as practicable. For employees on intermittent or recurring leave for the same incident, this notice will be provided every six (6) months.

When an employee plans to take leave under this policy, the employee must give the Company 30 days notice. If it is not possible to provide 30 days notice, the employee must give as much notice as is practicable. An employee who is to undergo planned medical treatment is required to make a reasonable effort to schedule the treatment in order to minimize disruptions to the Company's operation.

If an employee fails to provide 30 days notice for foreseeable leave with no reasonable excuse for the delay, commencement of the leave may be delayed for as much as 30 days from the date of the request.

Employees are expected to follow the Company's usual and customary call-out procedures for reporting an absence due to their approved intermittent family and medical leave, absent unusual circumstances. While on continuous leave, employees are requested to report periodically to the Company regarding the status of the medical condition and their intent to return to work.

16. Anti-Discrimination Laws

The Family and Medical Leave Act does not modify or affect any federal or state law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, or disability.

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Employers' obligations under Title VII of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, or the Americans with Disabilities Act have not changed. FMLA leave provisions are wholly distinct from the reasonable accommodation obligations of the disability discrimination laws.

17. Impact of State Laws

Beyond federal FMLA leave and other rights, Sonstegard will extend to employees the coverage and protection of any applicable state or local law that provides greater leave rights than the federal FMLA rights in this policy. If a particular leave qualifies for both federal FMLA leave and leave under state or local law, the leave used counts against the employee's entitlement under both laws except as otherwise provided by the state or local law. Please check with Human Resources to determine your rights and responsibilities for the area in which you reside.

18. Complaints, Investigation and Enforcement

If an employee requests and is denied a family and medical leave, the employee may file a grievance directly to the appointing authority. Employees may contact the Corporate Director of Human Resources at (605) 338-4642 regarding any complaints or to obtain information on their rights and responsibilities under the FMLA.

19. Appendix A

The following FMLA application forms are issued by the U.S. Department of Labor, Wage & Hour Division. In order to ensure the most-up-to-date federal FMLA application forms are used, please visit the DOL website: <https://www.dol.gov/whd/fmla/2013rule/militaryforms.htm>

- WH-380-E – Certification of Health Care Provider for Employee's Serious Health Condition
- WH-380-F – Certification of Health Care Provider for Family Member's Serious Health Condition
- WH-381 – Notice of Eligibility and Rights & Responsibilities
- WH-382 – Designation Notice
- WH-384 – Certification of Qualifying Exigency For Military Family Leave
- WH-385 – Certification for Serious Injury or Illness of Current Service Member – for Military Family Leave
- WH-385-V – Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave
- WH-1420 – FMLA Poster (<https://www.dol.gov/whd/regs/compliance/posters/fmlaen.pdf>)
- Sonstegard Fitness for Duty Certification (attached)



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Fitness for Duty Certification

(To be completed by the Health Care Provider)

The following information must be submitted two (2) days prior to returning to work. Be specific as to what the restrictions (if any) will entail, and how long they need to be in effect. For example, how many pounds can the employee lift, and how often. If kneeling, bending, twisting, etc. are limited, indicate how many times an hour that activity can be performed. If standing, walking or sitting are limited, indicate how many hours per day the employee can perform that activity.

PATIENT'S NAME: _____

Yes No Is this a work-related injury? Date patient is released to return to work: _____
Is patient able to return to regular duty with no restrictions?
Is patient able to return to limited duty (with restrictions)? If yes, please provide below.

Medications: List medications that may affect the patient's health and safety, the health and safety of other or the patient's ability to perform job functions in a safe manner: _____

List Restrictions: The follow terms denote frequency: occasionally (<33%), frequently (33-66%) and continuously (>66%) _____

Yes No Are restrictions permanent?
Are restrictions temporary? If so, how long are they in effect? _____

Health Care Provider Name (Print) Provider's Signature Date
Phone Number Fax Number Type of Practice (Field of Specialization, if any)

I hereby authorize the Company, to contact the above names physician or practitioner for the purpose of clarification and authentication of this certification.
Employee's Name (Print) Employee's Signature Date

Return this form to your Human Resources Department or Manager at least 2 business days prior to reporting for return to work. Without proper notification, your return to work may be delayed and unpaid.