

# Pregnancy in the Military- Convalescent Leave



## Defense Advisory Committee on Women in the Services (DACOWITS) Briefing

September 2023

Controlled by: OUSD(P&R)/(MPP)

As of: 29 August 23 (v1.3)

Excellence | People-Centric | Integrity | Collaboration | Respect

# Guidance for Convalescent Leave for Service Members



## Setting the Stage

- Policy (DoDI 1327.06, “Leave and Liberty Policy and Procedures,” August 25, 2023).
  - Convalescent leave is a period of non-chargeable leave granted to a Service member under medical care, which is part of the treatment prescribed for recuperation and convalescence.
- Law (10 U.S.C. § 701(h)):
  - A Service member who has given birth may receive convalescent leave in conjunction with the birth if the leave is specifically recommended, in writing, by the medical provider of the Service member to address a diagnosed medical condition; and is approved by the commander.
  - Convalescent leave may be authorized only for a medical condition of the Service member and may not be authorized for a member in connection with a condition of a dependent or other family member.
- Law (10 U.S.C. § 701(m)):
  - A Service member diagnosed with a medical condition is allowed convalescent leave if:
    - A Service member’s medical or behavioral health provider determines the member’s is not fit for duty as a result of that condition and recommends such leave to provide for the convalescence from the member’s medical condition.
    - A Service member’s commanding officer or commander of a military medical treatment facility approves the leave to a member who is diagnosed with a medical condition and is determined not yet fit for duty as a result of that condition.
  - A Service member may not take more than 30 days of convalescent leave with respect to a medical condition unless:
    - Authorized by the Secretary concerned or designee, but not below the grade of O-5, or civilian equivalent or
    - The member is approved for convalescent leave in conjunction with the birth of a child.
  - In authorizing convalescent leave for a Service member, the commander must limit the duration to the minimum that is essential in relation to the diagnosis, prognosis, and probable final disposition of the member, and tailored to the member’s specific medical needs rather than based on a predetermined formula except for leave provided in § 701(h).

# DACOWITS Request for Information # 4



a. Has any guidance been issued to the military services regarding convalescent leave or [sic] birth events considering the new legislation? If so, provide copies of the guidance and/or directives issued.

- On January 4, 2023, the Department issued Directive-type Memorandum (DTM) 23-001 to implement the expanded parental and convalescent leave provisions in 10 U.S.C. § 701 as amended by section 621 of Public Law 117-81, “National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2022.”
  - Eliminated the primary and secondary caregiver categories.
  - Authorized 12 weeks of parental leave for a birth, adoptive, and long-term foster parent of a newborn or minor child. Parental leave may begin after completion of convalescence for the Service member giving birth.
  - Removed the standard 6 weeks of maternity convalescent leave and replaced it with individualized convalescent leave that immediately follows the Service member’s release from the medical facility. The amount of convalescent leave depends on the individual medical need of the member rather than a predetermined formula.
- On August 25, 2023, the Department reissued DoD Instruction (DoDI) 1327.06, “Leave and Liberty Policy and Procedures.” The reissuance updates its convalescent leave policy to comply with 10 U.S.C. § 701(m) as amended by section 633 of Public Law 117-263, “James M. Inhofe NDAA for FY 2023.”
  - Convalescent leave may be granted to a Service member who is diagnosed with a medical condition and is determined to be unfit for duty as a result of the condition, and the health care provider of the Service member recommends convalescent leave to provide recuperation from the medical condition.

# DACOWITS Request for Information # 4



d. Have guidelines been provided addressing when commanders may disapprove convalescent leave, since such leave requires a commander's approval? If so, provide copies of such guidance.

- The Department's convalescent leave policies in DoDI 1327.06 and DTM 23-001 provide guidance for granting convalescent leave to a Service member after giving birth and immediately following the Service member's release from inpatient care at a hospital or medical facility. These guidelines are consistent with the statutory requirements of 10 U.S.C. § 701(h) and (m) for the granting of convalescent leave.
- The guidance in DoDI 1327.06 or DTM 23-001 do not address when commanders may disapprove convalescent leave following childbirth or for any other medical condition except for Service members undergoing treatment for an infectious or contagious disease.
- Inherent in the authority and responsibilities conferred upon a unit commander is the commander's discretionary authority to grant or deny leave within the constraints of operational requirements; the commander has a duty to consider the health and welfare, morale, and the needs of the Service member for whom the convalescent leave is requested; and informed by the health care provider's determination of the Service member's fitness for duty and recommendation for convalescent leave.