



FMLA Rule Changes for Military Family Leave

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On March 8, 2013, new regulations adopted by the United States Department of Labor will take effect regarding the federal Family and Medical Leave Act (the “FMLA”).

The revised regulations are intended to implement statutory changes made by Congress to the FMLA regarding military family leave issues. In general, the new regulations address two types of military family leave, known as Qualifying Exigency Leave and Military Caregiver Leave. Also covered are regulations dealing with airline flight crew members. This update addresses military family leave issues.

Originally enacted in 1993, the purpose of the FMLA was to provide eligible employees working for covered employers with unpaid job protected leave in circumstances including the birth or adoption of a child and to care for a close family member, or the employee herself, suffering from a serious medical condition. The FMLA was later amended to provide (i) exigency leave in certain defined circumstances to eligible employees with a close family member in the military and (ii) military caregiver leave by allowing up to 26 weeks of unpaid leave in a 12 month period to care for a close family member in the military who was seriously ill or injured.

Now, as a result of changes made by Congress to the FMLA expanding the rights of military caregivers, the DOL has adopted regulations to implement the new leave laws. Employers will be required to comply with the new regulations as of March 8, 2013.

Qualifying Exigency Leave entitles eligible employees with a spouse, son, daughter or parent in the military on covered active duty to take FMLA leave in a number of defined circumstances. Under the existing regulations, only employees with a close family member in the National Guard or Reserves were covered by the exigency leave provisions. Now, as the most prominent change encompassed by the new regulations, the exigency leave provisions have been broadened to also include eligible employees with a close family member in the Regular Armed Forces on covered active duty, which is defined as duty during deployment to a foreign country.



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In addition to broadening the coverage of Qualifying Exigency Leave to include members of the Regular Armed Forces, the categories of circumstances for which qualifying exigency leave may be taken has been expanded. Previously, the 6 approved categories included: issues arising from short-notice deployment; attending military events and related activities; child care and related activities; making financial and/or legal arrangements to address a military member's absence while on covered active duty; attending counseling; and certain post-deployment activities. Under the new regulations, the qualifying exigency leave rules will also include circumstances regarding the care of the military members parent who is incapable of self-care and the amount of time that an eligible employee may spend with the military family member for Rest and Recuperation Leave has been increased from the present 5 days to 15 days

In addition to enlarging upon the opportunities for Qualifying Exigency Leave, the new regulations have also broadened the existing rules for Military Caregiver Leave. Accordingly, whereas the existing regulations limited caregiver leave to circumstances involving military members who were currently on active duty, the new regulations also cover recent veterans with a serious injury or illness. Additionally, in a departure from the existing regulations which were limited to injuries or illness suffered while on active duty, the serious injury or illness in question under the new regulations will include the aggravation of a pre-existing injury while on active duty. And, unlike the existing requirements, the serious injury or illness may now be one that only manifested itself after the veteran left active duty. Eligible employees will be able to care for covered veterans so long as the veteran was discharged (other than dishonorably) within the 5 year period before the eligible employee began providing care.

The sum total and intent of the foregoing changes is to recognize the invaluable contributions that members of our military and their families make to our country on an ongoing basis. In so doing, however, the changes will undoubtedly impose additional regulatory burdens on employers who must now comply with new rules and regulations and learn to cope with additional time lost from work by members of their workforce. In order to remain compliant with the FMLA, covered employers will be well advised to display updated FMLA posters in the workplace and to update their employee handbooks in order to reflect these changes in the law.

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