



EMPLOYERS FACE NEW FAMILY MILITARY LEAVE REQUIREMENTS

In early 2008, Congress amended the Family and Medical Leave Act ("FMLA" or "Act"). It added two new reasons for employees to take FMLA leave. Both allow employees with family members in the military service to be absent from work to provide support or other assistance to military service members. The amendments directed the Secretary of Labor to issue regulations to clarify and to implement the new family military leaves.

Recently, the Department of Labor published new regulations interpreting the Act. They take effect on January 16, 2009. The new regulations explain and implement the new family military leaves.

These new leaves use the same basic eligibility standards applicable to other FMLA leaves. In other words, the Act covers only those employers that employ 50 or more employees. An eligible employee's employment must occur at a worksite within a 75-mile radius of facilities at which the employer has a combined total of at least 50 employees. The employer must have employed the employee for a period of at least 12 months in the past seven years. Finally, in the 12 consecutive months preceding the beginning of the employee's FMLA leave, the employee must have worked at least 1,250 hours.

The amendments establish one type of family military leave only for employees with a son, daughter, spouse, or parent in either the National Guard or the Reserves. Such an employee may take this leave because of a qualifying exigency related to the family member's impending call to duty or order to active duty. Eight events or activities related to the family member's either call or order to active duty define the meaning of qualifying exigency. Generally, they include (1) issues caused by a call or order to duty less than seven days before deployment, (2) military events and related activities, such as official ceremonies and family support or assistance programs, (3) non-routine childcare and school activities, (4) financial or legal arrangements, (5) counseling for the family member or his children, (6) short-term rest and recuperation leaves during the family member's deployment, (7) post-deployment activities, such as ceremonies and briefings, and (8) other activities related to the family member's either call or order to active duty if both the employer and employee agree. An employee may take a maximum of 12 weeks of this kind of family military leave in a 12-month period.

In response to a qualifying exigency leave request, employers may require eligible employees to provide copies of documents showing the need for a leave. Upon the initial request, employers may request copies

of orders or other documents issued by the military regarding the family member's call or order to active duty and the dates of such duty. The employer may also require the employee to provide a written certification of each qualifying exigency and copies of any documents supporting the request. The regulations include optional certification forms that employers may use for the written certifications of a qualifying exigency. The employer may verify a call or order to active of an employee's family member by contacting the Department of Defense. If the employee will meet with a third party during the leave, the employer may contact the third party to confirm the employee's reason for requesting the leave to attend the meeting. The employer cannot require an employee to recertify a family member's call or order to active duty.

The second type of family military leave allows FMLA leave to care for a member of the Armed Forces who has a duty related serious injury or illness. It also permits leaves to care for such military service members on the temporary disability retired list because of a duty related serious injury or illness. To be eligible, the employee must be the spouse, son, daughter, parent, or next of kin of the service member. The regulations define next of kin as the nearest blood relative except for the service member's spouse, parent, son, or daughter. They list the following priority of such blood relatives: (a) those granted legal custody of the service member, (b) siblings, (c) grandparents, (d) aunts and uncles, and (e) first cousins. If, however, the service member has made a written designation of another blood relative as her caregiver for FMLA purposes, then that person is the next of kin.

An eligible employee may take a maximum of 26 weeks of FMLA leave to care for a member of the Armed Forces in a single 12-month period. That period begins on the employee's first day of leave to care for the service member. The employee has eligibility for this kind of leave for each covered service member and each injury. Thus, an employee may have the right to more than 26 weeks of leave. For example, an employee could take 52 weeks of leave in the same 12-month period to care for different covered service members. Similarly, an employee could use more than 26 weeks of leave in 12 consecutive months to care for the same covered service member who suffers more than one duty related injury in that period. Finally, in combination with leaves taken for other FMLA purposes, an employee has a right to a maximum of 26 weeks of leave in a single 12-month period.

An employer may require written certifications from the covered service member's health care provider and either the employee or the covered service member. They must state facts sufficient to support the need for the leave. The regulations include optional certification forms for these purposes.

The new regulations put flesh on the bare bones of the earlier amendments to the FMLA. Employers must review and adapt their FMLA policies and practices now to address family military leaves. They can download the regulations and optional forms regarding family military leaves at http://www.federalregister.gov/OFRUpload/OFRData/2008-26577_PI.pdf.

If you have any questions about the family medical leaves, please call Gerry Richardson at (314) 552-4053.

Missouri Increases Its Minimum Wage Rates Effective January 1, 2009

Missouri raises its minimum wage rates as of January 1, 2009. The current hourly rate for non-tipped employees will increase from \$6.65 to \$7.05. The current hourly rate for tipped employees will change from \$3.35 to \$3.525. All employers that employ non-exempt employees in Missouri must pay those employees at rates at least equal to the Missouri minimum wage rate.

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