



eUpdate (February 2008)

Changes to FMLA – Servicemember Leave

As part of the newly enacted National Defense Authorization Act, two provisions have been added to the federal Family and Medical Leave Act (FMLA)¹ allowing a family member of certain members of the armed services to take leave. These provisions are effective immediately.

“Qualifying Exigency” Leave

This provision states that an employee whose spouse, son, daughter or parent is on active duty (or has been notified of an impending call or order to active duty) must be allowed to take a leave of absence under the FMLA (up to 12 weeks in any 12-month period) if the leave is the result of a “qualifying exigency”. The FMLA amendments do not include a definition of “qualifying exigency” but leaves it to be determined by regulation.

Servicemember Care Leave

The second provision allows up to 26 weeks of leave for the spouse, son, daughter, parent or next of kin to care for a “covered servicemember” with a “serious injury or illness”. “Covered servicemember” is defined as a member of the Armed Forces (including the National Guard or Reserves) who is undergoing treatment, in outpatient status, or on the temporary disability retired list. “Serious injury or illness” is defined as an injury or illness incurred in the line of duty that may render the servicemember medically unfit to perform his/her duties. This leave is only available during a single 12-month period.

An employee may only take 26 weeks of leave as a combined total of both types of leaves. Either leave may be taken on an intermittent or reduced schedule basis and substitution of paid leave is allowed in the same manner as currently available under the FMLA. An employer may require certification of the leave.

Regulations will be forthcoming from the Department of Labor to clarify the process for implementing these leaves. In the meantime, it is recommended that you update your leave of absence policy to include these types of leave.

For further assistance on compliance with this or other issues, contact Jeanne Flaherty at Employer’s Legal Advisor, Inc.

¹ The FMLA applies only to employers with 50 or more employees.

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