

New Family and Medical Leave Act Regulations Take Effect

By Joseph T. Bartulis, Jr., Esq.

On March 8, 2013, new Department of Labor (DOL) regulations regarding the Family and Medical Leave Act (FMLA) took effect. While the new regulations are somewhat expansive and cover a number of different things, including airline industry changes, the key changes for non-airline industry employers primarily address issues regarding military exigency leave, military caregiver leave, and how to correctly calculate one's intermittent leave under the act. Additionally, the DOL has modified a number of the forms used to access FMLA leave. This article will briefly detail the most notable changes that are relevant to non-airline industry employers covered by the FMLA.

Before delving into the key points of the new regulations, employers need to remember that the FMLA does not apply to all employers. Rather, it applies only to covered employers and eligible employees. While there are various exceptions to the general rules depending on the employer and/or the profession of the employee (e.g., school teachers), a covered employer is one with 50 or more employees and an eligible employee is one who has worked for the employer for not less than one year and who has worked 1,250 or more hours for the employer during that prior year. Assuming the employer is a covered employer and that the employee is an FMLA-eligible employee, the following new regulations are applicable.

QUALIFYING EXIGENCY LEAVE TIED TO MILITARY SERVICE

Among other things, the new regulations extend the qualifying exigency leave provisions to employees who have immediate family members or next of kin who are serving in either the Reserves, the National Guard or the regular armed forces. Previously, the regulations did not include the regular armed forces. While the extension to family members of those in the regular armed forces is welcome news to many, the DOL did add a previously non-existent requirement. For the employee to access qualifying exigency leave, his or her family member in the military must be deployed to a foreign country. The new regulations also add a provision allowing an eligible employee to take leave to care for the parent of a covered military service member who is unable to care for himself or herself in the military service member's absence. The new FMLA regulations regarding qualifying exigency leave also increase the number of days an eligible employee may take related to the rest and recuperation of the military service member. Previously, eligible employees could only take five days for this purpose; they can now take fifteen days.

LEAVE TO CARE FOR A COVERED MILITARY SERVICE MEMBER

Regarding an eligible employee's ability to access FMLA leave to care for a member of the armed services, the new regulations broaden the definition of what constitutes a serious injury or illness of a service member by including coverage for preexisting conditions of the service member that have been worsened or aggravated through active military duty. The new regulations also broaden the definition of who is a "covered service member." Specifically, veterans who are recuperating from or seeking medical attention for a serious medical condition are now considered "covered service members" under the FMLA.

INTERMITTENT LEAVE CLARIFICATIONS

As most covered employers know, the smallest increment an employee seeking FMLA leave can access is one hour or the amount of time an employer otherwise allows employees to access sick and vacation leave, whichever is shorter. Nonetheless, whereas a number of employers previously presumed they could restrict FMLA access to increments of not shorter than one hour, the new regulations make it clear that the increment taken for FMLA can be less than an hour if the employer allows employees to take other types of leave in increments shorter than one hour. Whatever shorter period applies to other leaves also applies to FMLA leave.

SUGGESTIONS TO EMPLOYERS

Given that covered employers are required to conspicuously post, via workplace posters, the provisions of the FMLA, employers must obtain copies of the revised posters containing the new regulations and post them in place of the current FMLA posters that are being used. They should also obtain copies of the several revised forms prepared by the DOL regarding one's access to FMLA. The DOL website contains links to the various revised forms. Regarding updated workplace FMLA posters, many payroll service providers have these forms and can provide them to their customers. Office supply stores also carry them. In addition to updating their FMLA forms and workplace posters, covered employers should also review their employee handbooks and/or other employee leave policies to make sure they correctly incorporate these new FMLA leave regulations provisions.

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