

FMLA Amendments – Military Personnel

The federal Family and Medical Leave Act was amended on January 28, 2008 (Pub. L. 110-181), to grant expanded leave benefits to military personnel and their families. The law went into effect immediately. The U. S. Department of Labor is expected to issue new regulations later this year to provide additional guidance.

This law creates two new categories of FMLA leave, as follows:

“Qualifying Exigency” Leave

An employee is entitled to take leave for a “qualifying exigency” (to be defined in regulations issued by the department of labor) arising out of the fact that a spouse, son, daughter, or parent of the employee is on active duty or has been notified of an impending call to active duty in support of a military operation in which armed forces are or may become involved in actions against an enemy or opposing force, or during a war or national emergency. This provision will not be effective until the regulations have been issued defining “qualifying exigency”, but the department of labor encourages employers to begin providing this type of leave to employees who otherwise qualify for FMLA leave. This leave is subject to the 12-workweek limitation on FMLA leave in a 12-month period.

Servicemember Family Leave

An employee who is the spouse, son, daughter, parent, or next of kin (nearest blood relative) of a servicemember who is undergoing medical treatment, recuperation, or therapy, or is otherwise in outpatient status or on the temporary disability retired list for a serious injury or illness incurred while on active duty, may take up to 26 workweeks in a 12-month period to care for the servicemember. However, this leave will be combined with any other FMLA leave the employee takes in the same period, and the combined total is not to exceed 26 workweeks. Also, this leave is available only during a single 12-month period.

Generally the requirements of the FMLA apply to these new categories of leave. For example:

- An employee must meet the requirements for eligibility for FMLA leave (have been employed for at least 12 months and have worked at least 1,250 hours in the preceding 12-month period).
- If the employee requests intermittent leave or leave on a reduced schedule, the employer may require the employee to transfer temporarily to an alternative position with equivalent pay and benefits that better accommodates the leave.
- The leave is not required to be compensated. However, the employer may require, or the employee may elect, to substitute any accrued paid vacation, personal leave, family leave, or medical or sick leave (but not if the employers' sick leave policy would not otherwise allow leave to be taken for this purpose).

- If the need for leave is foreseeable, the employee must give at least 30 days notice, or as much notice as is practicable.
- Leave of a husband and wife employed by the same employer is limited to a combined total of 26 workweeks for servicemember family leave, and to 12 workweeks for a qualifying exigency.
- Medical certification may be required, as appropriate. For “qualifying exigency” leave, certification may be required as provided under the new regulations.

To view the full text of the Family and Medical Leave Act as amended, click here:
<http://www.dol.gov/esa/whd/fmla/fmlaAmended.htm>

For additional assistance regarding the application of the FMLA, click here:
<http://www.dol.gov/esa/whd/fmla/>