

March 7, 2013

## New FMLA Rules Taking Effect – Updated Poster Required Now

The U.S. Department of Labor recently issued new regulations under the Family and Medical Leave Act (“FMLA”), which applies to employers with 50 or more employees. The regulations take effect on March 8, 2013. Here is an overview of what has changed.

### Updated FMLA Poster

The regulations have revised the mandatory FMLA poster, “Employee Rights and Responsibilities Under the Family and Medical Leave Act.” Employers covered by the FMLA must post the revised notice in the workplace by March 8, 2013. [Click here](#) to download the new poster.

### Military Family Leave Changes

The regulations make a number of changes to the military family leave provisions of the FMLA, as follows:

- **New parental care leave.** The regulations add parental care to the list of reasons for which an employee may take “qualifying exigency” leave. An employee who is the spouse, parent, son, or daughter of a military member may now take exigency leave for purposes of: 1) arranging for care of the military member’s parent; 2) providing care for the military member’s parent on an urgent, immediate need basis; 3) admitting or transferring the military member’s parent to a care facility; or 4) attending meetings with staff at a care facility for the military member’s parent. In all cases, the parent must be incapable of self-care and the parental care must be necessitated by the military member’s active duty or call to active duty.
- **Exigency leave for rest and recuperation expanded.** An employee may take a maximum of 15 days – increased from the current limit of five days – of qualifying exigency leave to spend time with a military member who is on rest and recuperation leave.
- **Exigency leave for child care and school activities.** The final regulations place new limits on qualifying exigency leave to arrange for child care or attend school activities for a military member’s child. The child must be the military member’s “biological, adopted, or foster child, stepchild, legal ward, or child for whom the

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military member stands in loco parentis, who is either under age 18 or age 18 or older and incapable of self-care because of a mental or physical disability.” The child, however, does not have to also be the employee’s child (although the military member must be the spouse, son, daughter or parent of the employee).

The new regulations also make these other changes to FMLA’s military leave provisions: 1) qualifying exigency leave is now available to family members of regular Armed Services members, rather than just the National Guard and Reserves, and military members in any branch must either serve or be called to serve in a foreign country or international waters; 2) veterans are now included in the definition of “covered servicemember” for purposes of military caregiver leave; 3) a servicemember’s “serious injury or illness” now includes a preexisting condition that was aggravated in the line of duty; and 4) the list of health care providers authorized to certify a serious injury or illness for purposes of military caregiver leave now includes any health care provider authorized under FMLA, not just those who are affiliated with DOD, VA, or TRICARE – however, second and third opinions now may be required by an employer for certifications that are completed by health care providers who are unaffiliated with DOD, VA, or TRICARE.

The Department of Labor has updated the military family leave certification forms to conform to the new rules. [Click here](#) to download the new forms.

### **Rules for Airline Flight Crews**

On December 21, 2009, the Airline Flight Crew Technical Corrections Act (AFCTCA) took effect, providing an alternative FMLA eligibility requirement for flight crews with respect to hours of service. The new regulations align FMLA rules with the AFCTCA requirements. Now, airline flight crew employees become eligible under the FMLA if the crew member meets the normal FMLA hours of service requirement (1,250 hours in the 12 months prior to the leave) or if the crew member has worked or been paid for at least 60 percent of the crew member’s applicable monthly guarantee and has worked or been paid for at least 504 hours. The regulations specify that it is the employer’s burden to demonstrate that a flight crew member is ineligible for FMLA leave. Consistent with the AFCTCA, the new rules also make changes to how leave time is calculated for flight crew members and include new FMLA recordkeeping requirements for airlines.

### **Intermittent FMLA Leave**

The new regulations clarify that employers must track intermittent FMLA leave using the smallest increment of time that the employer uses for other types of leave, but in no case may the increments be greater than one hour. Furthermore, an employer may only count time *actually taken* as FMLA leave against an employee's FMLA entitlement. Accordingly, the regulations state that if an employer “chooses to waive its increment of leave policy in order to return an employee to work -- for example, where an employee arrives a half hour late to work due to an FMLA-qualifying condition and the employer waives its normal one-hour increment of leave and puts the employee to work immediately -- only the amount of leave actually taken by the employee may be counted against the FMLA entitlement.”

Employers should immediately review their policies and procedures to ensure that they are in compliance with the new regulations. [Click here](#) to download the regulations.

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