

For Immediate Release:

March 2013
Employee Benefits
Compliance Breaking News
Volume 2013 Issue 4

Final Rules on Family and Medical Leave Act Released

Recently, the Department of Labor (DOL) published Final Rules implementing amendments to the Family and Medical Leave Act (FMLA) related to military and qualifying exigency leaves. Highlights are as follows:

COVERED ACTIVE DUTY

Eligible employees may take FMLA leave for a qualifying exigency when a military member:

- Is on covered active duty
- Is called to covered active duty status
- Has been notified of an impending call or order to covered active duty

This only applies to when the military member deploys to a foreign country.

EXIGENCY LEAVE

Exigency leave rights have been expanded to include employees who are family members needing to care for the urgent needs of an active duty service member (expanded from previous leave that only permitted this leave for reservists themselves). Family members include:

- Spouse
- Children (of any age)
- Parent

Care for a military member's parent:

- Parent must be incapable of self-care and must be the parent of the military member for which leave is taken
- Employee does not need to be related to the military member's parent; however, the military member must be a spouse, parent or child of the employee

CAREGIVER LEAVE

Military caregiver leave entitles an eligible employee to 26 work weeks of unpaid, job-protected leave during any single 12-month period to care for the covered service-member. The caregiver must be a:

- Spouse
- Parent
- Son/daughter, or
- Next of kin

Covered service-members include veterans who are:

- Undergoing medical treatment
- Recuperation; or
- Therapy

The serious injury or illness must have occurred while the service member was on active duty (could include pre-existing conditions prior to service-member's active duty, that may have been aggravated during active duty any time during the five years preceding the date of treatment).

OTHER CATEGORIES OF QUALIFYING EXIGENCIES

Short Notice Deployment

- Seven days from the date a military member receives notice of deployment, an employee may take leave to address issues that arise because of the deployment

Military Events and Related Activities

- An eligible employee attending any official ceremonies, programs, events, family support or assistance programs sponsored by the military related to deployment, would be entitled to leave

Child Care and School Activities

- An employee needing to arrange for childcare, or the urgent immediate need to provide child care, would be entitled to leave. The employee taking this leave does not need to be related to the military member's child

Financial and Legal Arrangements

- Employees making or updating financial and legal arrangement to address a military member's absence, while on covered active duty, are entitled to leave

Counseling

- Employees attending counseling for the employee, the military member, or the child of a military member, when the counseling arises from the covered active duty of a military member, are entitled to leave

Rest and Recuperation

- Employees may take up to 15 days (up from five) of leave to spend time with a military member who is on short-term, temporary Rest and Recuperation leave during deployment

Post-deployment Activities

- Employees may take leave for any activities that occur within 90 days of the end of the military member's covered active duty, including arrival ceremonies and other official ceremonies sponsored by the military, including death of a military member

Any other event

- Upon agreement of the employer and employee, other kinds of qualifying exigency circumstances

AIR FLIGHT CREW (TECHNICAL CORRECTIONS ACT)

Airlines pay pilots and flight attendants for being on mandatory stand-by and flight time. Since FMLA does not contemplate mandatory stand-by pay, air flight crew members need only have worked 504 hours during the previous 12-month period to be eligible for FMLA leave.

Employers should be aware of these new changes to FMLA if they have 50 or more employees working within a 75 mile radius. Plan documents may also need to be amended to account for the above changes. Finally, employers should replace any old FMLA posters effective March 8, 2013.

A link to the new FMLA Poster can be found here: <http://www.dol.gov/whd/regs/compliance/posters/fmlaen.pdf>
Additionally, a comparison chart of the old FMLA rules and the amended FMLA rules can be found here: <http://www.dol.gov/whd/fmla/2013rule/comparison.htm>



Lisa R. Nelson, Esq.
Director
Compliance & Regulatory Affairs
(858) 875-3017
lisan@barneyandbarney.com



Christopher K. Bao, Esq.
Compliance Manager, Orange County Office
Compliance & Regulatory Affairs
(949) 540-6924
chris.bao@barneyandbarney.com