

The U.S. Department of Labor (DOL) has published final regulations clarifying several amendments to the Family and Medical Leave Act (FMLA) that expand the law's military family leave provisions. The agency's final rule, released on the FMLA's 20-year anniversary, also implements changes enacted through the Airline Flight Crew Technical Corrections Act and contains other modifications to the prior regulations.

Following a 2008 law that extended FMLA-qualifying leave to certain eligible employees for reasons arising from a family member's service in the military, the National Defense Act Authorization Act for FY 2010 (NDAA) further expanded the leave entitlements available to relatives of covered service members. The DOL's final rule, published in the Federal Register on February 6, 2013, provides additional guidance regarding these and other changes.

## **Qualifying Exigency Leave**

Prior to the 2010 NDAA's enactment, eligible employees could take FMLA leave for qualifying exigencies because the employee's spouse, son, daughter or parent was on active duty or had been notified of an impending call or order to active duty in support of a contingency operation.

Among other things, the 2010 NDAA extended qualifying exigency leave to family members of service members in the Regular Armed Forces, as the law previously only provided such leave to family members of service members in the National Guard and Reserves. The 2010 law also added the requirement that the service member (National Guard, Reserves and Regular Armed Services) be deployed to a foreign country in order for qualifying exigency leave to be utilized by a covered family member.

The DOL's final regulations also add a new category of qualifying exigency leave. Eligible employees are now entitled to "parental care leave" to care for a military member's parent, which in many cases will be an in-law, who is incapable of self-care when the care is necessitated by the member's covered active duty. Further, under prior law, employees could take up to five days of qualifying exigency leave to spend time with a military member on Rest and Recuperation; the new regulations extend that time to 15 days.

## **Military Caregiver Leave**

Under the 2008 amendments to the FMLA establishing military caregiver leave law, certain family members were entitled to 26 workweeks of FMLA leave in a single 12-month period to care for a covered service member with a serious injury or illness incurred in the line of duty on active duty for which the service member was undergoing medical treatment, recuperation, or therapy. The NDAA revised the definition of "covered service member" to add veterans, provided they were a member of the Armed Forces at any time during the five-year period preceding the date of the medical treatment, recuperation, or therapy.

Importantly, the final regulations state that the period between their effective date and enactment of the NDAA on October 28, 2009, does not count for purposes of determining the five-year period for covered veteran status.

The regulations also clarify that, for a veteran, an injury or illness that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty may constitute a "serious injury or illness" in certain situations. The final regulations similarly expand the definition of a "serious injury or illness" for current service members, but without the limitations applicable to veterans.

## **Certifications**

The final regulations clarify that, with respect to military leave, any health care provider who is authorized to certify a FMLA medical certification form for other FMLA-qualifying reasons can sign FMLA certifications.

The DOL also has replaced the previous prototype FMLA medical certification and notice forms with a note that such forms should be obtained directly from the DOL website or a local office. Thus, in the future, the DOL will not need to issue new regulations each time it changes the required certification forms.

## **FORMS**

The U.S. Department of Labor has released revised model Family and Medical Leave Act ("FMLA") forms to administer federal FMLA leave and a notice poster. Employers should use the updated forms immediately, although they include no substantive revisions despite recent rulemaking on the FMLA military caregiver leave provisions. The new forms expire on February 28, 2015.

Employers should keep in mind that family and medical leave obligations under state/territorial laws might provide for a greater leave entitlement than the FMLA and (most notably in California, Connecticut and Washington, D.C.) require employers to provide other forms or information.

The DOL notice poster summarizes major provisions of the federal FMLA and tells employees how to file a complaint. By March 8, 2013, all covered employers must display the new notice poster in a conspicuous place where employees and applicants for employment can see it. The poster must be displayed at all locations even if there are no employees eligible for FMLA at the location (e.g., there are fewer than 50 employees employed within a 75-mile radius of the worksite).

Electronic posting also is permitted to satisfy the posting requirement, as long as it otherwise meets the requirements of the regulations.

**This is a very brief summary and provided as such. Please go to [www.wayco.com](http://www.wayco.com) and click on the Resource Library for additional information. Important, we cannot practice law and therefore please consult with your labor law attorney for specifics. Thank you.**