



FMLA AND THE MILITARY

By Dennis Steinman, Esq.

In January 2008, Congress passed new legislation regarding the Family and Medical Leave Act (FMLA). The new law is called the Family Leave in Connection with Injured Members of Armed Forces Act. The law grants additional leave under FMLA to the relatives of military personnel. The Act creates two new categories of FMLA leave: "Active Duty Family Leave" and "Injured Service Member Leave." This article describes the terms and obligations under the new Act for employers and employees who are covered by FMLA.

ACTIVE DUTY FAMILY LEAVE

The first new category is for employees who have a family member who has been called to or is on active

FMLA leave is now available when family is on active military duty

duty in the Armed Forces. Those employees may take up to 12 weeks of FMLA leave when they experience a "qualifying exigency" arising out of the fact that a spouse,

parent, or child is on or has been called to active duty.

While the new law does not define "qualifying exigency," it is at least expected to include situations in which the employee is needed to fulfill family and childcare responsibilities for covered service members who have been called to active duty.

The active duty leave entitlement is basically the equivalent of when an employee needs time off for other circumstances covered by FMLA. The new law is generally subject to most of the same requirements as other forms of FMLA leave, including eligibility, benefits, and job reinstatement.

Therefore, employers should be able to adjust existing policies and procedures to comply with this requirement.

INJURED SERVICE MEMBER LEAVE

The second type of leave is for employees who have a family member injured in the line of duty. This part of the new law creates an entirely new type of leave with different criteria than traditional FMLA leave.

In general, employees are entitled to injured service member leave if they are the "spouse, son, daughter, parent, or next of kin" of a "covered service member" who has a "serious injury or illness." Although this is

Injuries from active military service are now covered

similar to standard FMLA leave, these new requirements are very different, such as:

- Qualifying employees are entitled to a combined total of 26 weeks of leave (including traditional FMLA leave) in a 12-month period, as opposed to the usual 12 weeks.

Injured Service Member Leave allows 26 weeks of leave

- The definition of a "serious injury or illness" covers a much broader range of health situations than a "serious health condition," which is the standard that applies when an employee takes regular FMLA leave.

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Eligibility requirements for the new law are the same as for employees who want to take leave for other purposes. An injured service member's "next of kin" has been added to the list of people who are covered under the law. That's defined simply as the "nearest blood relative," which is a broader standard than what applies to other types of FMLA leave.

Eligible employees may take injured service member leave to care for a family member who is a "covered service member." To qualify, the relative must:

- Be a member of the Armed Forces, National Guard, or Reserves;

- Suffer from an injury or illness incurred on active duty in the Armed Forces that may render him medically unfit to perform the duties of his office, grade, rank, or rating; and
- Be undergoing medical treatment, recuperation, or therapy, be in outpatient status, or be on the temporary, disability retired list as a result of this serious injury or illness.

*FMLA policies and Handbooks
should be updated*

There will be many questions that need to be answered as this

new law is interpreted by courts and the Department of Labor.

Employers should consider drafting a policy on these new FMLA requirements for use with their employees. Please contact us if you need any assistance with this or have any questions about the law.

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