

# COMPLIANCE

## ...the bottom line.

## New FMLA Regulations Now In Effect

### The Bottom Line

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On November 17, 2008, the U.S. Department of Labor published new final regulations interpreting the Family Medical Leave Act (FMLA) including the newly enacted Military Leave provisions. These new regulations were effective January 16, 2009.

Below is a summary of the basic provisions of the FMLA. For full details, it may be necessary to review the actual regulations.

#### Basic Leave Entitlement

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

- For incapacity due to pregnancy, prenatal medical care or child birth;
- To care for the employee's child after birth, or placement for adoption or foster care;
- To care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
- For a serious health condition that makes the employee unable to perform the employee's job.

The definition of "Parent" has been greatly expanded under the new regulations to include step, adoptive and foster parents.

#### Military Family Leave Entitlements

Eligible employees with a spouse, son, daughter, or parent on active duty or called to active duty status in the National Guard or Reserve in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period.

#### Benefits and Protections Under FMLA

During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

#### Eligibility Requirements

Employees are eligible if they have worked for a covered employer for at least one year, with 1,250 hours worked over the previous 12 months, and if at least 50 employees are employed by the employer within 75 miles.

#### Definition of Serious Health Condition

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities. Other conditions may meet the definition of continuing treatment.

#### Use of Leave

An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

#### Substitution of Paid Leave for Unpaid Leave

Employees may choose, or employers may require use of, accrued paid leave while taking FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the employer's normal paid leave policies.

## **Employer and Employee Responsibilities**

Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.

Covered employers must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

Employees also have specific notice obligations under FMLA. We also recommend that you review the newly published FMLA forms. It is possible that using these forms will be the best way to ensure compliance with the Act depending on your workforce and your needs.

## **Disputes**

Disputes as to whether leaves qualify under the FMLA must be resolved through employer-employee discussions, and the ultimate decision must be documented.

## **The Bottom Line**

Employers should review their current Leave policies and practices to ensure that they comply fully with these new Regulations. This Advisory only provides a summary of the newly-enacted Regulations and does not provide a comprehensive review of all changes to the FMLA or issues that surround compliance with the law.

For complete details on the FMLA, visit the US Department of Labor website at <http://www.dol.gov/esa/whd/fmla/> where you may also download the new FMLA forms.

***Laurus Strategies has a Labor, Employment and Benefits Law Attorney on staff who is available for our valued clients to discuss this and other compliance-related issues. Please contact your Laurus Strategies Client Manager for more details.***

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