

New FMLA Leave

On January 28th President Bush signed into law a defense authorization bill (H.R. 4986) which amends the Family and Medical Leave Act. Among other things, the new law expands FMLA leave to assist military service members and their families. **Two new kinds of leave** are provided. Of course these changes will only apply to organizations subject to the FMLA.

1. Active Duty Leave

This new leave will permit a qualified employee to take FMLA leave for “**any qualifying exigency**” arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces. This portion of the new law isn’t effective until the Department of Labor defines “qualifying exigency,” however employers are urged to provide this leave to qualifying employees.

This new type of leave is an expansion of the existing 4 reasons for leave that a qualified employee can take for **a total of 12 workweeks during any 12 month period**:

1. The birth of a child and to care for the child
2. The placement of a child for adoption or foster care
3. To care for a spouse, son, daughter, or parent with a “serious health condition,” and
4. Because of a “serious health condition” of the employee such that he/she can’t perform the functions of the position.

2. Caregiver Leave

This new service member family leave permits an eligible “spouse, son, daughter, parent, or next of kin” to take **up to 26 workweeks during a 12 month period** to care for a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.” The leave is available only during a single 12 month period. This portion of the law is effective immediately.

Some Things to Consider

- “Next of Kin”- You’ll notice that the caregiver leave provides leave for “next of kin,” a new concept for the FMLA. It’s defined as the “nearest blood relative.”
- “Serious Injury or Illness” - This term is not the same as “serious health condition” but involves an “injury or illness” . . . “that may render the member medically unfit to perform the duties of the member’s office, grade, rank or rating.”
- Several states have their own military leave laws. If you are in one of those you’ll have to know how those coordinate with the federal FMLA, and if the leaves can run concurrently.
- Both new types of leave may be taken on an intermittent or reduced schedule basis.
- The law authorizes substitution of paid leave for the new unpaid leaves.
- Employees are required to provide “reasonable and practicable” notice of leave that is foreseeable.

What to Do Now?

As at least part of this law is effective immediately, it's important to notify your employees of the changes. You will also need to make changes in your employee handbooks, policy manuals, and related materials.

Since this is simply an expansion of the types of leave available under the FMLA it's important to remember that other FMLA provisions still need to be followed when implementing the new leave provisions.

What to Watch For?

In addition to formulating regulations regarding the new military leave, the Department of Labor is working on other new Family and Medical Leave regulations. Some of the areas expected to be addressed include:

- Requiring employees to call in to request a leave before taking it (unless there are extenuating circumstances)
- Clarifying medical certifications
- Reviewing unscheduled leave for chronic conditions
- Increasing employee awareness of FMLA rights

The text of the changes is not yet available so we'll have to wait for more details. But the DOL has recently sent the proposed changes to the Office of Management and Budget. Once approved, they will be published for a 60 day comment period in the Federal Register. The new military related leave law may hurry them along. No word on when the DOL may revise its FMLA forms, notices, or poster.

For more information go to the Department of Labor's website at: www.dol.gov/esa/whd

Interested in reprinting the above information?

As a service to the human resource community, we are pleased to allow our white papers to be reprinted. However, when reprinting this article, you must maintain the accuracy and intent of the content, and you must include a final credit paragraph which includes our name, HRN Management Group, and a link to our site at www.hrnonline.com. Need text version? Let us know.

**Are You Overpaying or
Underpaying Your
Employees?**

**Keep Your Compensation
Program Competitive, Fair, and
Legally Compliant with**

**Compease Salary
Administration Software**

www.hrnonline.com/comp_about.asp