



ATTORNEYS AT LAW

**March 7, 2013**

### **IS IT TIME TO UPDATE YOUR FMLA POLICY?**

Recent amendments to the regulations that implement the Family Medical Leave Act (“FMLA”) take effect on **March 8, 2013**. The amendments expand the scope of the FMLA in two significant ways. First, the revised regulations provide families of eligible veterans with the same FMLA leave currently available to families of military service members and enable more military family members to take leave for activities that arise when a service member is deployed. The second expansion modifies the regulations for airline personnel and flight crews.

Below is a summary of the changes to the regulations implementing the FMLA:

- A covered veteran is now defined as any veteran who has been discharged or released within five years prior to the date the employee’s military caregiver leave begins. Please note that veterans that have been dishonorably discharged are not covered.
- The definition of a serious injury or illness of a covered veteran is expanded to include one of the four alternatives:
  - (1) A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember’s office, grade, rank, or rating;
  - (2) A physical or mental condition for which the covered veteran has received a VA Service Related Disability Rating (VASRD) of 50 percent or greater and such VASRD rating is based, in whole or in part, on the condition precipitating the need for caregiver leave;
  - (3) A physical or mental condition that substantially impairs the veteran’s ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service or would do so absent treatment; or

(4) An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

- Military members must be deployed in a foreign country in order to be on “covered active duty” under the FMLA.
- Qualifying exigency leave is extended to eligible employees who are family members of members of the Regular Armed Forces.
- The amount of time an employee may take for qualifying exigency leave related to the military member’s Rest and Recuperation leave is increased from five to fifteen days.
- An additional qualifying exigency leave category is created for parental care leave to provide care necessitated by the covered active duty of the military member’s parent who is incapable of self-care.

The revised FMLA regulations mark one of several changes in the last few years with respect to FMLA leave for service members and their families. Employers should review their FMLA policies for compliance, and update their employment handbooks accordingly. Employers should also be sure to post the revised FMLA poster, which is available online at <http://www.dol.gov/whd/regs/compliance/posters/fmlaen.pdf>. Please contact Ross Hamilton [(336) 271-5279], Denis Jacobson [(336) 271-5242] or Brandy Mills [(336) 271-5212] of the Labor and Employment practice group if you have any questions concerning your compliance with the FMLA.

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