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## Expanded Rights for Military Families Under FMLA

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The United States Department of Labor Wage and Hour Division (DOL) recently published a Final Rule that clarifies and expands an eligible employee's ability to take unpaid leave under the Family and Medical Leave Act (FMLA). The Final Rule, which became effective March 8, 2013, broadens the legal right to take unpaid leave to care for certain family members who serve in the military, whether on active duty or in the reserves. Significantly, it also extends unpaid leave to care for certain family members who are veterans.

Since January 2009, eligible employees have been allowed to take unpaid leave under FMLA for certain "qualifying exigencies" related to the military service of their spouse, children or parents. Qualifying exigencies generally include short notice deployments, pre- and post-deployment activities, certain childcare and school activities, counseling, rest and recuperation and certain legal and financial issues. Previously, this leave could only be used by employees whose family members were in the National Guard or Selected Reserves. Under the Final Rule, eligible employees may now use qualifying exigency leave for their spouse, children or parents who are in the regular Armed Forces (e.g., on active duty). However, the leave must relate to the active duty family member's overseas deployment or other limited circumstances.

Before the Final Rule took effect, FMLA qualifying exigency leave was also limited to five calendar days when being taken for the purpose of spending time with a service member who is temporarily home for leave, commonly called "R&R" (e.g., rest and recuperation). This was frustrating for many employees, as typically a service member is allowed two weeks of R&R at the midway point of a deployment. For employees who have not seen their spouse, child or parent for six months or more because of a deployment, spending those two full weeks with their family member is incredibly important. Those who have endured military deployments understand this point well. Thankfully, the DOL recognized this and under its Final Rule has increased FMLA qualifying exigency leave for R&R from five to 15 calendar days.

Military caregiver leave has also been available under the FMLA since 2009. This leave is now expanded to care for veterans who are undergoing medical treatment, therapy or recovery from a serious injury or illness. To qualify, the veteran must have been discharged or released from the military under conditions other than dishonorable and must have been a member of the Armed Forces within the last five years before the leave is first taken. For veterans who were discharged from military service before March 8, 2013, however, the time period between October 28, 2009 and March 8, 2013 does not count against this five year period.

The DOL also broadened the definition of serious injury or illness to include pre-existing medical conditions. But, for a pre-existing medical condition to qualify, the injury must have been aggravated in the line of duty of the service member or veteran's military service and must have rendered the service member medically unfit for further military service.

The application of military caregiver leave to veterans is significant. According to a 2009 study by the U.S. Department of Veterans Affairs, approximately 15% of veterans suffer from post-traumatic stress disorder (PTSD). More recent studies have shown that the rate may be as high as 40% for combat veterans of the wars in Iraq and Afghanistan. Further, a 2012 study by the Mayo Clinic showed that suicide rates in the Army increased by 80% between 2004 and 2008. According to the study, the increase in suicides correlates to an increase in mental disorders such as PTSD. Because PTSD generally qualifies as a serious medical injury or mental illness, the expansion of military caregiver leave to veterans creates the opportunity for family members to more actively participate in the rehabilitation process without fear of losing their jobs. Hopefully, this will enable veterans to better cope with and recover from PTSD and other mental and physical injuries.

In addition to the expansion of FMLA leave as it pertains to military personnel, it is also worth noting that the Final Rule establishes eligibility criteria for FMLA leave by airline flight crew members. Although the details of this change are beyond the scope of this article, flight crew members may be eligible for FMLA leave if, during the past 12-month period, they have worked at least 504 hours and worked or been paid for at least 60% of the applicable monthly guarantee.

Because of these changes, the DOL has issued a number of new or revised forms. Employers should familiarize themselves with these forms and start using them immediately. They include the following: (1) Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave; (2) Certification for Serious Injury or Illness of a Service Member; (3) Certification for Military Leave; and (4) Notice of Eligibility. The updated forms are available on the DOL's website.

The DOL also revised its FMLA poster to reflect these changes. This is important for employers, who are required to display the poster, which summarizes employee rights under the FMLA. As of March 8, 2013, employers are required to display the revised FMLA poster in a conspicuous place where it is easily viewed by employees and job applicants.

Failure to comply with the FMLA can result in serious financial liability for employers. It is critical that employers ensure they fully understand all of the changes under the FMLA, use the proper FMLA forms, properly display the updated FMLA poster and review their Employee Handbooks to ensure compliance with the Final Rule.

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