



Military Family Leave Under the FMLA

Karl W. Butterer

Employment, Labor & Benefits News

May 19, 2015

The Family and Medical Leave Act (FMLA) has been significantly changed over the last eight years, particularly in terms of its application to employees with family members in the military. Covered employers must be aware of FMLA provisions and protections that have been put in place specific to the needs of military families.

QUALIFYING EXIGENCY LEAVE

Eligible employees are entitled to take up to 12 weeks of FMLA leave per 12-month period because of any qualifying exigency resulting from the fact that the military member spouse, son, daughter, or parent of the employee is either (i) on covered active duty; (ii) called to covered active duty status; or (iii) has been notified of an impending call or order to covered active duty.

“Covered active duty” means, for members of the regular armed forces, duty during deployment with the armed forces to a foreign country. For members of the reserve components of the armed forces, it means duty during deployment with the armed forces to a foreign country under a federal call or order to active duty in support of a contingency operation.

If an employee’s military relative is on covered active duty, the employee may take FMLA leave for qualifying exigencies such as for military events, for financial and legal tasks to deal with the family member’s active duty, and for urgent child-care and school activities, among other things.

Employees seeking leave must give reasonable and practicable notice if the exigency is foreseeable, and the employer may require verification information such as a copy of the military member’s active duty orders, a statement of facts explaining the reason for leave and the expected length of leave.

AUTHORS/ CONTRIBUTORS

Karl W. Butterer

PRACTICE AREAS

Employee Benefits

Employer Services



MILITARY CAREGIVER LEAVE

Eligible employees are entitled to take a total of 26 weeks of leave to care for a covered service member or veteran during a single 12-month period. In order to qualify, the employee must be a spouse, parent, child or next of kin of a service member or a veteran who sustained a qualifying injury for up to five years after discharge from military service.

A covered service member is one who has suffered a serious injury or illness in the line of duty that may render him or her medically unfit to perform the duties of his or her office, grade, rank or rating. Military caregiver leave is determined per service member and per injury, and the 26 weeks of caregiver leave may be taken all at once or intermittently. In addition, an employee is entitled to a combined total of 26 weeks of FMLA leave during a single 12 month period. Accordingly, an employee can take 12 weeks for his or her own health condition, and 14 weeks to care for a covered service member.

As with qualifying exigency leave, employees seeking leave must provide notice to their employers. Employers may require employees to provide certification supporting the leave request including information such as a statement of facts regarding the service member's health condition supporting the need for FMLA leave, contact information for the authorized health care provider completing the certification, and estimates for the period and dates of treatment or recovery.

Please contact Karl W. Butterer with any questions about FMLA or other employment related issues.