

BenAlert

BENEFIT TRENDS AND LEGISLATIVE UPDATES

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HOWITT
Benefit Services

Howitt Benefit Services is pleased to provide you with periodic updates on benefit trends and legislative updates. As part of our valuable services, we want to ensure that you are in compliance and well-informed of the ongoing changes in our industry.

In this BenAlert:

- FMLA: Expanding Military Leave Entitlement and Sample Amendment

January 4, 2010

On October 28, 2009, President Obama signed the 2010 National Defense Authorization Act (NDAA) into law. The NDAA contains an expansion of Family Leave Rights. The FMLA provision actually contains no specific effective date. As a result, most practitioners advise employers to treat the expansion as being effective immediately.

FMLA Eligibility

Generally, an employer with 50 or more employees within a 75-mile radius of the location where an employee is based is subject to the FMLA. An eligible employee is one who has worked for that employer for at least 12 months and who has worked at least 1,250 hours in the past 12 months. During the leave, an employer must provide group health plan benefits as it did prior to the leave and cannot discriminate against or refuse to reinstate an employee who takes valid leave. FMLA is a complex mandate with many obligations both on the employers and employee's part. If you have questions, please call us or your Employment Counsel.

Background

As you may recall, Congress amended the Family and Medical Leave Act in January 2008 to contain leave rights for family members associated with a call to service for members of the National Guard or Military Reservists. That law provides up to 12 weeks of "Exigency Leave" as well as 26 weeks of unpaid leave for a caregiver to provide care for a family member who was injured while on active military duty.

The Expanded Benefit

- 1. Exigency Leave.** The new law expands Exigency Leave rights to family-member employees to care for the urgent needs of active duty service members, not just reservists. The term "exigency" can include the

following: short-notice deployment; military events and related activities; child care and school activities; financial and legal arrangements; counseling, rest and recuperation; post-deployment activities; and any other event the employer and employee agree to be a qualifying exigency.

- 2. Caregiver Leave.** The new law also expands the definition of Covered Service Member to include veterans who are undergoing medical treatment, recuperation or therapy for serious injury or illness that occurred while on active duty any time during the five years preceding the date of treatment.
- 3. State Laws.** State legislatures in states with similar leave laws must adopt these changes for these changes to be effective under their respective date leave laws.

Action Plan

Although this appears to affect only a small number of employers, it is important that each employer subject to the Family and Medical Leave Act do the following:

1. Amend your FMLA leave policies to comply with these changes; and,
2. Notify all staff who administer company leave policies regarding the expansion of coverage.

See below the sample amendment for wraparound documents which incorporates these FMLA changes. [Click here](#) and go to Page 120 of the bill to review the new law.

Air Flight Crew Technical Corrections Act

For your information, Congress has also passed additional legislation to clarify the hours of service requirements for FMLA rights for airline pilots and flight attendants. As you may know, FMLA generally requires employees to have worked for their employers a minimum of 12 months and for at least 1,250 hours during the previous 12-month period, as determined under the terms of the Fair Labor Standards Act (FLSA). Airlines pay pilots and flight attendants for being on mandatory standing as well as for flight time. The FLSA does not recognize “mandatory stand-by pay.” As a result, airline flight crews will be eligible for FMLA calculated on the basis that he/she had worked or been paid for 504 hours during the previous 12-month period.

Since this FMLA change applies only to airline employers, we have not prepared a separate sample amendment.

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