

BenAlert

Benefit Trends and Legislative Updates



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Howitt Insurance 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.

New California Law Gives Unpaid Leave to Qualified Military Spouses

November 1, 2007

On Oct. 9, 2007, Governor Schwarzenegger signed California Assembly Bill 392 into law and declared that it should take effect immediately as an urgency statute. The bill, which has been added as Section 395.10 to the California Military and Veterans Code, requires employers with 25 or more employees ("qualified employers") to provide any employee whose spouse is a member of the Armed Forces of the United States, National Guard or Reserves, who has been deployed during a time of military conflict, up to 10 days of unpaid leave when his or her military spouse is on leave from deployment.

The employee must give reasonable advance notice of his or her intent to take the leave and provide the employer with written documentation certifying that his or her spouse will be on leave from deployment during the requested time leave is to be taken. This new right to leave under Section 395.10 does not diminish or otherwise affect an employee's entitlement to any other form of leave that the employee is entitled to take.

The law is intended to serve the families of those troops currently serving in military conflicts in Iraq and Afghanistan, and to assure that those families are able to spend time together during qualified members' leaves from deployment without fearing that they will lose their jobs or otherwise be penalized or suffer hardship at work for taking such leave.

Qualified member

A "qualified member" is a person who is any of the following: 1) a member of the Armed Forces of the United States (i.e., Army, Navy, Air Force, Marines and Coast Guard) who has been deployed during a period of military conflict to an area designated as a combat theater or combat zone by the President of the United States; 2) a member of the National Guard who has been deployed during a period of military conflict; or 3) a member of the Reserves who has been deployed during a period of military conflict.

Qualified employees

A "qualified employee" is a person who satisfies *all* of the following requirements: 1) is the spouse of a qualified member; 2) performs service for hire for a qualified employer for an average of 20 or more hours per week; 3) provides his or her qualified employer with notice, within two business days of receiving official notice that the qualified member will be on leave from deployment, of his or her intention to take the leave provided for in Section 365.10; and 4) submits written documentation to his or her qualified employer certifying that the qualified member will be on leave from deployment during the time the leave provided for in Section 365.10 is requested. Independent contractors are not eligible to be qualified employees.

Period of military conflict and combat zones

A period of military conflict is either of the following: 1) period of war declared by the United States Congress; or 2) period of deployment for which a member of a reserve component is ordered to active duty pursuant to either Sections 12301 and 12302 of Title 10 of the United States Code (authorizing Reserves to be called to active duty), or Title 32 of the United States Code (governing the National Guard).

In order for a member of the Armed Forces to be a qualified member, he or she must have been deployed during a military conflict to a combat theater or combat zone. The President designates combat zones by Executive Order. Currently, there are three active Executive Orders designating the following areas as combat zones: 1) the Arabian Peninsula Areas, including: the Persian Gulf, Red Sea, Gulf of Oman, the part of the Arabian Sea north of 10° North latitude and west of 68° East longitude, the Gulf of Aden, and the countries of Bahrain, Iraq, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates; 2) the Kosovo area, including the Federal Republic of Yugoslavia (Serbia and Montenegro), Albania, the Adriatic Sea and the Ionian Sea north of the 39th Parallel; and 3) Afghanistan. A member of the Reserves or the National Guard who has been deployed during a period of conflict is considered a qualified member, regardless of whether the service is in a combat zone.

No retaliation

Section 395.10 makes it unlawful for an employer to retaliate against a qualified employee for requesting to take leave that it permits.

Unanswered questions

This new law leaves several questions unanswered. First, Section 395.10 does not address whether the leave must be taken at a time of the employee's choosing, or whether an employer can ask that the leave be taken at some other time during the spouse's period of leave from deployment based on the operational needs of the employer. Second, the law does not describe what constitutes sufficient "written documentation" that the service member is on leave during the employee's requested leave period. Nor does the law identify any deadline for a qualified employee to request specific leave dates or provide such "written documentation" to the employer. The law also does not identify any deadline for a qualified employee to request specific leave dates or provide such "written documentation" to the employer. Finally, the law fails to address whether Section 395.10 applies to registered domestic partners of military personnel who are entitled to many of the same rights, protections and benefits afforded to spouses, pursuant to California Family Code section 297.5. Without further guidance as to these unresolved questions, an employer is wise to err on the side of leniency toward an employee's request to use this benefit.

Employers' to-do list:

What steps should California employers take right now?

- Update leave policies to be certain that they comply with Section 395.10
- Inform employees of their potential entitlement to leave under the California Military and Veterans Code
- Update employee handbooks to reflect the availability of this new right to leave
- Consider preparing a standard written form for qualified employees to use to request permission to use Section 395.10 leave

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