

## **Employment Edge 84th Edition - DOL Publishes New FMLA Military Leave Poster; Employers Should Consider Revisions to FMLA Policy**

March 1, 2008

The U.S. Department of Labor (DOL) recently issued a new Family and Medical Leave Act (FMLA) poster that outlines the recent amendments to the FMLA. As mentioned in previous Edge articles, in January, 2008, President Bush signed into law amendments to the FMLA that provide two new types of FMLA leave for certain relatives of members of the armed services. The new poster outlines the two types of military FMLA leaves. It must be posted in a conspicuous place by all employers covered by the FMLA and should be posted along side the more general FMLA poster. The new poster is available on the DOL website. The more general poster is also available on the DOL website.

In addition to posting the new required poster, employers will need to amend their FMLA policies to provide notice of the two new types of FMLA leave. Employers that are covered by the FMLA and that have an employee handbook are required to include in the handbook information concerning employee rights and obligations under the FMLA. Because the new amendments to the FMLA became law when the President signed them, notice of the new types of leave should be included in employers' policies.

Unfortunately, even though these FMLA amendments became law when the President signed them, there is still some uncertainty about their application. For example, one of the new types of FMLA leave provides 12 weeks of unpaid leave to an eligible employee due to a "qualifying exigency" arising out of the fact that the employee's spouse, son, daughter, or parent is on active military duty (or has been notified of an impending call or order to active duty). The statute instructs the DOL to issue regulations defining the term "qualifying exigency." Because the DOL has not yet defined this term, the DOL has stated that employers are encouraged, but not yet required, to provide this type of leave. Employers are required to provide the other new type of FMLA leave immediately, however. This type of leave allows eligible employees to take up to 26 weeks of leave to care for a spouse, son, daughter, parent, or next of kin who is a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.

Employers should consider whether they want to amend their FMLA policies immediately to include notice of the new types of FMLA leave or whether they want to take other interim measures to provide employees with the required notice. The advantage of amending the FMLA policy right away is that all of the required information about FMLA leave entitlements is in one place and up to date and the regulation's requirements are clearly fulfilled. On the other hand, amending the FMLA policy right away may create significant administrative burdens for some employers, because they will likely have to issue another amendment to their policy once the DOL issues regulations. It is expected that later this year, the DOL will issue new regulations regarding the FMLA military leaves and revised regulations covering all aspects of the FMLA. Employers should consult with legal counsel about the benefits and risks of amending their policies right away and about whether there are other interim measures employers could take to comply with the law, such as distributing copies of the new FMLA poster to all employees and asking them to keep it with their handbook or distributing a memo to employees regarding the new FMLA leave entitlements.

If you have questions about these two new types of leave, or would like assistance drafting a revised FMLA policy, please contact a member of Gray Plant Mooty's Employment Law Practice Group.

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