



Compliance Update

What You Need to Know About the FMLA
Expansion

March, 2008

Is Your Company Covered by FMLA?

The FMLA generally covers all employers who employ 50 or more employees for each working day during each of 20 or more calendar work weeks in the current or preceding calendar year.

The definition of an eligible employee: Under the FMLA, an eligible employee works for a covered employer and has worked for the employer:

- For at least 12 months.
- For at least 1,250 hours during the 12-month period immediately preceding the start of the leave. (The 12 months of employment need not be consecutive months.)

In addition, the employee must work at a location where the company has 50 or more employees within 75 miles.

Please also remember:
Indiana passed legislation last

To Employers

We realize that most co-ops are not required to comply with FMLA due to their size (see: [Is Your Company Covered by FMLA in the box to the left](#)). However, we also know that many of you voluntarily follow its guidelines and wanted you to be aware of a recent expansion of the FMLA provisions.

For the first time since it was enacted in 1993, the *Family and Medical Leave Act* (FMLA) has been expanded. In fact, one of the changes became effective when President Bush signed the *National Defense Authorization Act* on January 28, 2008.

FMLA Rights Expanded for Military Families

1st Change: Caregiver leave allowed after the Injury or Illness of a Service Member

This new benefit permits a spouse, son, daughter, parent or "next of kin" of a military service member, who has incurred a serious illness or injury in the course of duty, to take off up to 26 weeks of unpaid leave in a 12-month period to care for that person.

Note: These 26 weeks are the total that can be taken in a 12-month period, and are not in addition to the 12 weeks that FMLA provides for other reasons.

This change to FMLA became effective immediately upon enactment.

2nd Change: Leave allowed due to military duty or a call to active duty

The new law also allows a spouse, child or parent of an individual on active military duty (or one who has been called up) to take up to 12 weeks of unpaid FMLA leave due to "any qualifying exigency" that arises out of the military service.

year that granted a family military leave benefit under certain circumstances. This legislation also applied to employers with 50 or more employees.

[Click Here for a summary of that legislation](#)

Terms Clarified

Two other significant terms in the new FMLA legislation cover the definitions of *servicemember* and *next of kin*:

A *covered servicemember* 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."

A *next of kin* is "the nearest blood relative" of an individual. The new FMLA law states an "eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave, family leave, or medical or sick leave of the employee for leave provided under [the new FMLA provision] for any part of the 26-week period of such leave..."

In addition, if a husband and wife are employed by the same employer, the aggregate number of workweeks of leave the couple is entitled to under the new FMLA benefits may be

The law does not define "exigency," but the dictionary definition is "a situation calling for immediate attention, urgency or pressing needs." The Department of Labor (DOL) is preparing regulations that will define the term. Until such regulations are issued, this FMLA change will not be enforced. However, the DOL "encourages" employers to provide this type of leave to military family members in the meantime.

The federal agency is currently soliciting comments about the types of exigencies that should qualify for leave.

Some possibilities: Arranging for child care; attending official ceremonies where the military has asked for family participation; making financial arrangements to address a service person's absence; and attending counseling related to the active duty of a family member.

This change allowing leave for qualifying exigencies was added to the law as an additional reason for FMLA leave. In other words, the 12 weeks are combined with the existing reasons for FMLA leave, which are listed below.

If Your Company is Covered by FMLA, You Should Take the Following Steps

1. Notify employees immediately of the new benefits. The FMLA requires covered employers to "post and keep posted on its premises, in conspicuous places" an explanation of the employer's obligations and the rights and benefits of employees. (The Department of Labor has a notice employers are encouraged to post, although it is not required. Click [here](#) to print it out. Required language regarding the new benefits should be available once the DOL issues the definition of *qualifying exigency*.)

2. Add the new benefits to your employee handbook.

Typically, covered employers include an FMLA policy in their employee handbooks defining who is eligible for leave and listing the four reasons employees can take FMLA leave. The two new types of leave should be added.

The FMLA previously provided for these types of leave:

- The birth and care of an employee's newborn child.
- Placement with the employee of a child for adoption or foster care.
- To care for an immediate family member (spouse, child, or parent) with a serious health condition.
- When the employee is unable to work because of his or her own serious health condition.

The two new types of leave are:

- To care for a "member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy; is on outpatient status; or is otherwise on the

limited to 26 workweeks during a single 12-month period.

temporary disability retired list, for a serious injury or illness."
- Any qualifying exigency...arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation.

Questions?

If you have any questions concerning this new legislation, please contact Aaron Curtis or Dan Bond at Capstone Benefit Advisors.

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