

## New FMLA Regulations Issued by DOL

The U.S. Department of Labor (DOL) has issued revised, final regulations under the Family and Medical Leave Act (FMLA). The new regulations allow employers more control over when employees can take leave. As expected, the new regulations cover the recently enacted leave benefits for family members of both seriously injured or ill service members and National Guard and Reserve members who have been called to service. These are the first significant revisions to the FMLA regulations since the law was enacted 15 years ago and will affect all employers subject to the FMLA.

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The FMLA regulatory changes have been more than two years in the making. The new rules go into effect on or about January 16, 2009. Here are some highlights:

- Employees will have to follow their employer's call-in policies when they are planning to miss work "absent unusual circumstances." Currently, employees have up to two days after a business absence to notify the company about their need for leave.
- To have a "chronic condition" that qualifies for FMLA leave, employees for the first time will have to certify that they visited a doctor at least twice a year for the condition.
- In a departure from the proposed regulations, one new provision prohibits direct supervisors from getting an employee's medical information when an FMLA certification is needed, apparently to protect the employee's privacy.
- Employers may require fitness-for-duty tests for employees returning from intermittent FMLA leave if doing the job raises a significant risk of harm to themselves or others.
- When employers place injured or ill workers on light duty, the time on light duty doesn't count against the employee's FMLA leave entitlement.
- The regulations provide additional clarification regarding the type and frequency of treatments that employers must receive under the "chronic" and "continuing treatment" definitions of a serious health condition.
- The regulations also contain (1) more detailed guidance on the substitution of paid leave for FMLA leave and (2) substantial new notice requirements for employers.

### Two Big Benefits for Some Military Families

The new regulations clarify how to implement the expanded 26 weeks of unpaid FMLA caregiver leave for relatives of seriously injured or ill service members.

"Next of kin," which can include grandparents, aunts, uncles, first cousins, and any relative so designated by the service member -- not just spouses, parents, and children -- are eligible to take this leave. The 26 weeks can be taken over a 12-month period, with the clock starting to run on the first day of the leave.

This military caregiver leave may be taken only once per injury, but more than one family member may qualify for it, and each relative may take leave again if there are other injuries. The leave, however, is available only while the service member remains in the military.

The other new military family leave benefit allows relatives of those called to active duty in the National Guard and Reserves -- but not regular active-duty military members -- to take up to 12 weeks of leave for several qualifying "exigencies." A variety of deployment-related reasons would be covered, including (1) short-notice deployment, (2) military events and related activities, (3) child-care and

school activities, (4) financial and legal arrangements, (5) counseling, (6) rest and recuperation, (7) postdeployment activities, and (8) additional activities.

"Rest and recuperation" means that the employee may take up to five days of leave to spend time with a covered military member who is on short-term, temporary rest and recuperation leave during the period of deployment.