

DOL Issues Final Regulations Implementing the 2009 FMLA Amendments

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The Family Medical Leave Act (FMLA) regulations issued by the Department of Labor (DOL) in 2009 addressed the new military leave requirements established in the National Defense Authorization Act for Fiscal Year 2008 (FY 2008 NDAA). The DOL has issued its final regulations (“Final Rule”) and an updated poster for covered employees.

The Final Rule revises the 2009 amendments regarding military leave, incorporates amendments to the military leave provisions made by the National Defense Authorization Act for Fiscal Year 2010 (FY 2010 NDAA), and provides regulations for the 2009 Airline Flight Crew Technical Corrections Act. Both the Final Rule and the requirement to display the updated FMLA poster go into effect on March 8, 2013.

Below are some of the Final Rule’s changes:

Military Qualifying Exigency Leave

- Implements amendments made to the FY 2010 NDAA’s expansion of qualifying exigency leave to cover the Regular Armed Forces on active duty deployed to a foreign country.
- Increases the length of time an eligible family member may take for qualifying exigency leave for reason of “rest and recuperation” from the five days set forth in the 2009 regulations to up to a maximum of 15 days.
- Creates a new qualifying exigency leave for parental care. Like the previous qualifying exigency leave for child care, this leave is not for regular parental care, but rather to deal with urgent care needs, time spent placing a parent in a care facility, or time meeting with caregivers.

Military Caregiver Leave

- Expands the definition of “serious injury or illness” to include pre-existing injuries or illnesses of current service members that were aggravated in the line of duty.
- Implements amendments made to the FY 2010 NDAA’s expansion of military caregiver leave to cover care for retired veterans undergoing medical treatment, recuperation, or therapy for a serious injury or illness who were discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.
- Interprets the five-year period of eligibility for covered veteran to exclude the period between the enactment of FY 2010 NDAA on October 28, 2009 and enactment of Final Rule on March 8, 2013 to protect the military leave entitlement of family members of veterans whose five-year period has either expired or has been diminished during that time.

Airline Flight Crew FMLA Eligibility Requirements

- Provides special rules applicable only to flight crew employees regarding the calculation of hours worked for purposes of determining eligibility.

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- Adopts a uniform entitlement for airline flight crew employees of 72 days of leave for one or more of the FMLA qualifying reasons and 156 days of military caregiver leave.

Intermittent Leave

- Clarified rules for calculation of intermittent or reduced schedule FMLA leave, including clarifying regulatory language regarding increments of leave and providing additional explanation of the physical impossibility rule. These amendments do not substantively change the 2009 regulations and are provided for clarification only.

Other changes:

- Expands the list of authorized health care providers. Previously, only health care providers who were affiliated with the Department of Defense (DOD) were authorized to provide medical certifications for caregiver leave.
- Permits an employer to request a second and third opinion for medical certifications obtained from a non-DOD health care provider.
- Updates the FMLA optional use forms to reflect the statutory changes and creates a new optional use form for the certification of a serious injury or illness for a veteran.

The DOL's Final Rule includes many other changes. See DOL website for more information including and poster and revised forms.

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