

New Ohio Law Mandates Leave for Military Families

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On July 2, 2010, Ohio's Military Family Leave Act ("OMFLA") went into effect. Pursuant to this Act, employers are now required to allow employees to take up to 10 days or 80 hours of leave, whichever is less, if a family member is a member of the uniformed services and called to active duty or is injured, wounded, or hospitalized while serving on active duty. Although OMFLA is similar in concept to the recent regulations supplementing the Family Medical Leave Act ("FMLA"), there are some important differences between the two laws. Thus, it is essential for employers to assess the eligibility of individual employees in every circumstance when leave is requested.

An employer should first determine if the employee is eligible for OMFLA leave by analyzing both employer and employee eligibility requirements. The new leave requirements mandated by OMFLA only apply to public and private employers who employ 50 or more employees. Unlike the FMLA, these 50 employees do not have to be within a 75 mile radius of one another. Next, to be eligible for OMFLA leave, an employee must have been employed by the employer for at least 12 consecutive months and worked at least 1,250 hours for that employer during the 12 months immediately preceding the commencement of leave. The requirement that the 12 months of employment be consecutive is exclusive to OMFLA because, although the FMLA similarly requires 12 months of employment, those 12 months are not required to be consecutive.

Once it is determined that an employee is eligible for OMFLA leave, the employer should determine if the employee is requesting leave for an OMFLA approved reason. Specifically, employees are permitted to take leave if his or her spouse, parent, child, or other person over whom he or she has legal custody is a member of the uniformed services. Uniformed services include the armed forces, along with Ohio organized militia engaged in full-time national guard duty, commissioned corps of the public health service, or any other category of persons designated by the president of the United States in time of war or emergency. Employees may request this leave if the family member is called to active duty for a period longer than 30 days or is injured, wounded, or hospitalized while serving on active duty. If an employee is requesting leave for a family member called to active duty, he or she must inform their employer at least 14 days prior to taking leave. If the employee desires to take the leave because of an injury, wound, or hospitalization, the employee must inform the employer at least two days prior to taking the leave. The circumstances giving rise to OMFLA leave are more extensive than those permitted by the FMLA and thus, there may be a situation where an employee is not eligible for FMLA military caregiver leave but is eligible for OMFLA leave.

Further, unlike the FMLA which permits employers to choose their method of calculation, the 10 days or 80 hours of leave required by OMFLA are provided on a calendar year basis. Similar to the FMLA requirements, leave pursuant to OMFLA requires that employers maintain employees' benefits during the period of leave and employees are also guaranteed the right to be restored to the same or an equivalent position upon return from leave. However, OMFLA leave, like FMLA, is unpaid and employees have no right to receive their salary or wages during this leave.

It is important to note that OMFLA leave is only available to employees who do not have other leave, except for sick or disability leave, available. Thus, OMFLA does not run concurrently with FMLA leave because

employees are eligible for OMFLA only if no other leave, including FMLA, is available. However, as always, employers are permitted to provide more generous leave policies than those required by FMLA or OMFLA. Due to the obvious differences and overlap between OMFLA and FMLA, it is important for employers to individually evaluate employee eligibility for each leave request received.