

## FMLA Coverage Expanded: Employers Should Update Policies, Forms and Postings

February 25, 2013

### **What you need to know:**

The US Department of Labor recently issued new regulations and guidance that expand coverage under the Family and Medical Leave Act for certain classes of employees. The key changes expand coverage under the FMLA for military family leave and leave for caregivers of adult children with disabilities.

### **What you need to do:**

As a result of the DOL's new regulations and guidance, employers should review and revise written FMLA policies and/or employee handbooks as necessary in order to reflect the expanded categories of FMLA leave. Employers should also obtain new FMLA certification forms and post the new FMLA poster, all of which are available via the [DOL's website](#).

### **Changes to Military Family Leave**

On February 6, the DOL published final regulations that expand FMLA coverage for families of military service members. These regulations are scheduled to go into effect on March 8.

Under the prior (and new) version of the FMLA, employees whose family members are deployed to military service are eligible for up to 12 weeks of leave in certain circumstances (referred to as qualifying exigency leave). In addition, employees who wish to care for family members who have become seriously ill or injured in connection with current military service are eligible for up to 26 weeks of leave in certain circumstances (referred to as military caregiver leave). The new regulations clarify and expand those rights in the following key ways:

- A new category of exigency leave for parental care has been created, such that an employee may be eligible to take leave to care for a military family member's parent.
- The maximum number of days for exigency leave to spend time with a military family member on Rest and Recuperation leave has been increased from five to 15 calendar days.
- The scope of exigency leave for family members of military service members has been clarified to include service members of the National Guard and Reserves and the Regular Armed Forces.
- Eligibility for military caregiver leave has been expanded to cover family members of veterans with qualifying serious injuries or illnesses, in addition to previously covered current service members.

### **Changes to Leave for Caregivers of Adult Children with Disabilities**

On January 14, the DOL issued Administrative Interpretation No. 2013-1, which clarifies the definition of "son or daughter" under the FMLA and expands the circumstances in which employees may take leave to care for adult children with disabilities who are 18 years of age or older.

Employers should be aware of the following notable changes to this type of FMLA leave:

- The definition of “disability” that applies in determining whether an adult child has a disability that qualifies his or her parent for FMLA leave has been expanded. The definition of “disability” under the FMLA now must be interpreted in accordance with the expanded definition of “disability” under the Americans with Disabilities Act Amendments Act of 2008.
- The DOL has clarified that the age of a son or daughter at the onset of his or her disability is not relevant to determining a parent’s entitlement to FMLA leave.
- The DOL has clarified that *two* types of leave may be available to parents caring for an adult son or daughter whose disability commenced during military service: military caregiver leave of up to 26 weeks in a single 12-month period *and* leave for caregivers of adult children with disabilities of up to 12 weeks in subsequent years.

### **Additional Changes**

This alert addresses key FMLA changes that are relevant to most employers, but the new regulations expand employees’ rights under the FMLA in other ways as well. For example, the new regulations also expand FMLA coverage for airline flight crews. Additionally, the DOL has retained, but clarified, certain existing regulations regarding methods for calculating an employee’s FMLA leave time. These clarifications concern the minimum increments to be used in calculating intermittent, reduced-schedule or other forms of leave, as well as calculating leave time when it is physically impossible for an employee to start or end work mid-way through a shift. Employers are advised to consult with counsel as FMLA requests arise, to ensure full knowledge of the scope of the changes included in the new regulations.

### **What the Changes to the FMLA Mean for Employers**

Because the DOL’s new regulations and guidance have expanded the circumstances under which employees are eligible for FMLA leave, employers can expect an increase in the number of FMLA leave requests. In order to ensure that company policies are compliant with the changes to the FMLA, employers should consult with counsel for guidance in reviewing and revising any written policies, employee handbooks and internal procedures that concern FMLA leaves. As of March 8, employers will also be required to use new FMLA certification forms and post a new FMLA poster, copies of which are available via the [DOL’s website](#).

### **For More Information**

For more information, please contact your lawyer at Choate or one of the following members of the Labor, Employment & Benefits Group:

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