

First Wednesday — A Monthly Discussion of Employment Law Issues and Other Hot Topics for Management



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New Changes to FMLA and Compliance Regarding Employee Leave Requests

As a result of the ongoing war, significant changes were made to the federal Family Medical Leave Act (FMLA). FMLA and the California Family Rights Act, which apply to employers with 50 or more employees, define employees' rights surrounding leave to care for a sick family member, to bond with a new baby, or to attend to the employee's own serious medical condition. The federal and state laws overlap and in some instances conflict; thus leave requests can be problematic in the HR arena. Employers must administrate any leave request correctly and ensure compliance with the applicable laws in every case. To that end, it is important to be informed of these changes to existing leave laws.

New FMLA amendments went into effect January 28, 2008, and extend the reach of leave laws affecting families with family members in the Armed Services, National Guard, or Reserves. Employers must now allow up to 12 weeks of leave to any employee with a "qualifying exigency" due to the fact that they have a family member serving active duty. (What exactly is meant by "qualifying exigency" remains an open

question pending the development of federal regulations.) If the employee's spouse, child, or parent is on active duty, or if the employee's family member has received notice that they must soon report for duty, the employee may be entitled to 12 weeks of leave.

The other major change introduced by the FMLA amendments requires employers to provide up to 26 weeks of leave in any 12 month period to an employee who must care for a family member who was seriously injured while on active duty. This amendment also provides that the employee is entitled to the leave if they are related to the service member as "next of kin", meaning they are the injured service member's spouse or closest blood relative. The injury must be serious, and must have occurred while the family member was on active duty. The employee is entitled to the leave if the injured service member is undergoing medical treatment, or therapy, or is recuperating, regardless of whether their care is provided on an inpatient or outpatient basis.

The federal amendments broaden the scope of family leave. They add to the existing laws that permit an employee to take 12 weeks of leave to care for a sick family member, and California's "kin care" law, which allows employees to use their sick days to take time off to care for a child, parent, or spouse. The "kin care" law (Labor Code sections 233 and 234) applies to employers that offer sick leave, and it does not require that the "kin" have suffered a serious injury.

The federal amendments also add to the new "time off for military spouses" legislation signed by Governor Schwarzenegger in October 2007. Under this law, a spouse of a member of the Armed Forces, National Guard, or Reserves may take up to ten days of unpaid leave when their spouse is home on leave. This law only applies to employers with 25 or more employees.

Often, employers have difficulty determining whether leave is warranted, and which leave laws apply, overlap, conflict, or complement one another. If one of your employees requests leave, you should consult your attorney to avoid potential mishaps and retaliation claims in applying these laws.

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