

Legislative Brief

FMLA Regulations Are Final



On November 17, 2008, the Department of Labor (DOL) published its final rule to implement the first-ever amendments to the Family and Medical Leave Act (FMLA) which were signed into law by President Bush in January 2008. The regulations provide new military family leave entitlements and generally update the regulations under the 15 year-old FMLA. The DOL predicts that the final rule will improve communication between employees, employers, and health care providers to make the law operate more smoothly, and provide needed clarity for both workers and employers about their responsibilities and rights under FMLA leave. The final regulations become effective on **January 16, 2009**.

HIGHLIGHTS OF THE REGULATORY CHANGES IN THE FINAL RULE

The revised final regulations respond to over 4,600 public comments received in response to the DOL's February 2008 Notice of Proposed Rulemaking (NPRM), which proposed changes to the current FMLA regulations. The proposed regulations were developed in response to several U.S. Supreme Court and lower court cases invalidating portions of the current regulations, the passage of statutory amendments to the FMLA and a comprehensive review of the DOL's 15 years of experience administering the FMLA. Provisions in the final rule call for increased notice obligations for employers so that employees will better understand their FMLA rights, while revising the employee notice rules to minimize workplace disruptions due to unscheduled FMLA absences. The final rule also contains technical changes that reflect decisions by the U.S. Supreme Court and lower courts.

The final regulations also implement two important new military family leave entitlements for eligible specified family members:

- (1) Up to 12 weeks of leave for certain qualifying exigencies arising out of a covered military member's active duty status, or notification of an impending call or order to active duty status, in support of a contingency operation, and
- (2) Up to 26 weeks of leave in a single 12-month period to care for a covered service member recovering from a serious injury or illness incurred in the line of duty on active duty. Eligible employees are entitled to a combined total of up to 26 weeks of all types of FMLA leave during the single 12-month period.

The final rule includes two new DOL certification forms that may be used by employees and employers to facilitate the certification requirements for the use of military family leave.

A copy of the FMLA final regulations, as well as the related DOL Press Release and Fact Sheet, can be found at: <http://www.dol.gov/esa/whd/fmla/finalrule.htm>

Please contact Benefit Resources at 719-884-0700 with any questions.

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