



The Family and Medical Leave Act (FMLA) Amended

Early this year President Bush signed into law the National Defense Authorization Act for FY 2008, Section 585 which amends The Family and Medical Leave Act (FMLA). FMLA requires covered employers, (employers who employ 50 or more employees for each working day during 20 or more calendar workweeks in the current or preceding calendar year) grant an eligible employee up to a total of 12 workweeks of unpaid leave during any 12-month period. An eligible employee is an employee who (a) has been employed by the employer for at least 12 months and (b) has worked at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave and (c) is employed at a worksite where 50 or more employees are employed by the employer within a 75 miles radius of the worksite. Eligible reasons for FMLA leave are:

- For the birth and care of a newborn child of the employee;
- For placement with the employee of a son or daughter for adoption or foster care;
- To care for an immediate family member (spouse, child, or parent) with a serious health condition

The National Defense Authorization Act for FY 2008, Section 585 amends FMLA to allow two new types of leave for employees who are relatives of service members. The two new types of allowable leave are listed below:

- **Qualifying Exigency Leave** – An eligible employee is entitled to take up to 12 work weeks of leave during any 12-month period for a “qualifying exigency leave” arising because the employee’s spouse, son, daughter or parent is on active duty or has been notified of a call or order to active duty (in the Armed Forces in support of a “contingency operation” a specified military operation).
- **Service Member Care Leave** – An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member is entitled to take up to **26** workweeks of leave during a 12-month period to care for the service member. A covered service member is a member of the Armed Forces who is undergoing medical treatment, recuperation, or therapy, is an outpatient, or is on the temporary disability retired list, for a “serious injury or illness” (an injury or illness incurred in the line of duty on active duty in the Armed Forces that may render the service member medically unfit to perform his or her duties).

The Department of Labor is working to prepare more comprehensive guidance regarding rights and responsibilities under this new legislation including final regulations defining “qualifying exigency”. In the interim, employers should act in good faith in providing leave under the new legislation. Because the NDAA amends the FMLA, FMLA-type procedures should be used as may be appropriate.

The company should have procedures in place for employees to request FMLA leave. If you need assistance with FMLA compliance you may go to our HR Resource Center website at <http://hrnavigator.hrtadvisors.com/>. Your user name is your first initial and full last name and your password is conestoga. Once logged on, click on the Access BNA Content button and it will take you to the HR Essentials page. From there choose "Compliance by Law" and click on FMLA. In the model documents section you can download a sample employer FMLA leave policy and Request for FMLA Leave form. The company should post the new worksite poster regarding Military Family Leave found at <http://www.dol.gov/esa/whd/fmla/NDAAAmndmnts.pdf> along with the current poster "Your Rights under the Family and Medical Leave Act of 1993" <http://www.dol.gov/esa/regs/compliance/posters/pdf/fmlaen.pdf>.

If you have any questions about the above information you may contact Fredonna Smith at 610-889-9500, extension 103 or by e-mail at fredonna.smith@conestoga.biz.

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